Section 6
Administrative Procedure Act

Supp. 03-2

ARIZONA ADMINISTRATIVE PROCEDURE ACT

(Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10)

Editor's Disclaimer and Note: The statutes printed here are not the official text of the Administrative Procedure Act. The Act became effective on January 1, 1995. The Act in effect on December 31, 1994, governs for rules submitted to the Governor's Regulatory Review Council for review or to the Attorney General for certification before January 1, 1995.

ARTICLE 1. GENERAL PROVISIONS

§ 41-1001. Definitions

In this chapter, unless the context otherwise requires:

1. "Agency" means any board, commission, department, officer or other administrative unit of this state, including the agency head and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf or under the authority of the agency head, whether created under the Constitution of Arizona or by enactment of the legislature. Agency does not include the legislature, the courts or the governor. Agency does not include a political subdivision of this state or any of the administrative units of a political subdivision, but it does include any board, commission, department, officer or other administrative unit created or appointed by joint or concerted action of an agency and one or more political subdivisions of this state or any of their units. To the extent it purports to exercise authority subject to this chapter, an administrative unit otherwise qualifying as an agency must be treated as a separate agency even if the unit is located within or subordinate to another agency.
2. "Code" means the Arizona administrative code.
3. "Committee" means the administrative rules oversight committee.
4. "Contested case" means any proceeding, including rate making, price fixing and licensing, in which the legal rights, duties or privileges of a party are required or permitted by law to be determined by an agency after an opportunity for an administrative hearing.
5. "Council" means the governor's regulatory review council.
6. "Delegation agreement" means an agreement between an agency and a political subdivision that authorizes the political subdivision to exercise functions, powers or duties conferred on the delegating agency by a provision of law. Delegation agreement does not include intergovernmental agreements entered into pursuant to title 11, chapter 7, article 3.
7. "Emergency rule" means a rule that is made pursuant to § 41-1026.
8. "Fee" means a charge prescribed by an agency for an inspection or for obtaining a license.
9. "Final rule" means any rule filed with the secretary of state and made pursuant to an exemption from this chapter in § 41-1005, made pursuant to § 41-1026, approved by the council pursuant to § 41-1052 or 41-1053 or approved by the attorney general pursuant to § 41-1044. For purposes of judicial review, final rule includes proposed summary rules having interim effect pursuant to § 41-1027.
10. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but it does not include a license required solely for revenue purposes.
11. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.
12. "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.
13. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.
14. "Preamble" means:
    (a) For any rule making subject to this chapter, a statement accompanying the rule that includes:
        (i) Reference to the specific statutory authority for the rule.
        (ii) The name and address of agency personnel with whom persons may communicate regarding the rule.
        (iii) An explanation of the rule, including the agency's reasons for initiating the rule making.
        (iv) A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study and any analysis of each study and other supporting material.
        (v) The economic, small business and consumer impact summary, or in the case of a proposed rule, a preliminary summary and a solicitation of input on the accuracy of the summary.
        (vi) A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state.
        (vii) Such other matters as are prescribed by statute and that are applicable to the specific agency or to any specific rule or class of rules.
    (b) In addition to the information set forth in subdivision (a) of this paragraph, for a proposed rule, the

preamble also shall include a list of all previous notices appearing in the register addressing the proposed rule, a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and where, when and how persons may request an oral proceeding on the proposed rule if the notice does not provide for one.

(c) In addition to the information set forth in subdivision (a) of this paragraph, for a proposed summary rule, the preamble also shall include a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and an explanation of why summary proceedings are justified.

(d) For a final rule, except an emergency rule, the preamble also shall include, in addition to the information set forth in subdivision (a), the following information:
   (i) A list of all previous notices appearing in the register addressing the final rule.
   (ii) A description of the changes between the proposed rules, including supplemental notices and final rules.
   (iii) A summary of the comments made regarding the rule and the agency response to them.
   (iv) A summary of the council's action on the rule.
   (v) A statement of the rule's effective date.

(e) In addition to the information set forth in subdivision (a) of this paragraph, for an emergency rule, the preamble also shall include an explanation of the situation justifying the rule being made as an emergency rule, the date of the attorney general's approval of the rule and a statement of the emergency rule's effective date.

15. "Provision of law" means the whole or a part of the federal or state constitution, or of any federal or state statute, rule of court, executive order or rule of an administrative agency.
16. "Register" means the Arizona administrative register.
17. "Rule" means an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intraagency memoranda that are not delegation agreements.
18. "Rule making" means the process for formulation and finalization of a rule.
19. "Small business" means a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations.
20. "Substantive policy statement" means a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion. A substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties, confidential information or rules made in accordance with this chapter.
21. "Summary rule" means a rule that is made pursuant to § 41-1027.

Historical Note

Laws 1986, Ch. 232, § 4, effective January 1, 1987. Amended by Laws 1994, Ch. 363, § 1 effective January 1, 1995. Amended by Laws 1995, Ch. 251, § 2, effective July 13, 1995. Amended by Laws 1997, Ch. 221, § 182 effective July 21, 1997. Amended by Laws 1998, Ch. 57, § 17, effective May 7, 1998. Amended by Laws 2002, Ch. 334, § 2, effective August 22, 2002.

§ 41-1001.01. Regulatory bill of rights

A. To ensure fair and open regulation by state agencies, a person:

1. Is eligible for reimbursement of fees and other expenses if the person prevails by adjudication on the merits against an agency in a court proceeding regarding an agency decision as provided in § 12-348.
2. Is eligible for reimbursement of the person's costs and fees if the person prevails against any agency in an administrative hearing as provided in § 41-1007.
3. Is entitled to have an agency not charge the person a fee unless the fee for the specific activity is expressly authorized as provided in § 41-1008.
4. Is entitled to receive the information and notice regarding inspections prescribed in § 41-1009.
5. May review the full text or summary of all rule making activity, the summary of substantive policy statements and the full text of executive orders in the register as provided in article 2 of this chapter.
6. May participate in the rule making process as provided in articles 3, 4, 4.1 and 5 of this chapter, including:
   (a) Providing written or oral comments on proposed rules to an agency as provided in § 41-1023 and having the agency adequately address those comments as provided in § 41-1052, subsection C.
   (b) Providing written or oral comments on rules to the governor's regulatory review council as provided in article 5 of this chapter.
7. Is entitled to have an agency not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized by statute, rule or state tribal gaming compact as provided in § 41-1030, subsection B.
8. Is entitled to have an agency not make a rule under a specific grant of rule making authority that exceeds the subject matter areas listed in the specific statute or not make a rule under a general grant of rule making authority to supplement a more specific grant of rule making authority as provided in § 41-1030, subsection C.
9. May allege that an existing agency practice or substantive policy statement constitutes a rule and have that agency practice or substantive policy statement declared void because the practice or substantive policy statement constitutes a rule as provided in § 41-1033.
10. May file a complaint with the administrative rules oversight committee concerning:
   (a) A rule's, practice's or substantive policy statement's lack of conformity with statute or legislative intent as provided in § 41-1047.
   (b) An existing statute, rule, practice alleged to constitute a rule or substantive policy statement that is

alleged to be duplicative or onerous as provided in § 41-1048.

11. May have the person's administrative hearing on contested cases and appealable agency actions heard by an independent administrative law judge as provided in articles 6 and 10 of this chapter.
12. May have administrative hearings governed by uniform administrative appeal procedures as provided in articles 6 and 10 of this chapter.
13. May have an agency approve or deny the person's license application within a predetermined period of time as provided in article 7.1 of this chapter.
14. Is entitled to receive written notice from an agency on denial of a license application:
    (a) That justifies the denial with references to the statutes or rules on which the denial is based as provided in § 41-1076.
    (b) That explains the applicant's right to appeal the denial as provided in § 41-1076.
15. Is entitled to receive information regarding the license application process at the time the person obtains an application for a license as provided in § 41-1079.
16. May receive public notice and participate in the adoption or amendment of agreements to delegate agency functions, powers or duties to political subdivisions as provided in § 41-1026.01 and article 8 of this chapter.
17. May inspect all rules and substantive policy statements of an agency, including a directory of documents, in the office of the agency director as provided in § 41- 1091.
18. May file a complaint or inquiry with the advocate for private property rights regarding constitutional taking as provided in chapter 8, article 1.1 of this title.
19. May file a complaint with the office of the ombudsman-citizens aide to investigate administrative acts of agencies as provided in chapter 8, article 5 of this title.

B. The enumeration of the rights listed in subsection A of this section does not grant any additional rights that are not prescribed in the sections referenced in subsection A of this section.

Historical Note

Laws 1998, Ch. 57, § 18, effective May 7, 1998.
Amended by Laws 2000, Ch. 272, § 3, effective July 18, 2000.

§ 41-1002. Applicability and relation to other law

A. Articles 1 through 5 of this chapter apply to all agencies and all proceedings not expressly exempted.

B. This chapter creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by other statutes. To the extent that any other statute would diminish a right created or duty imposed by this chapter, the other statute is superseded by this chapter, unless the other statute expressly provides otherwise.

C. An agency may grant procedural rights to persons in addition to those conferred by this chapter so long as rights conferred on other persons by any provision of law are not substantially prejudiced.

Historical Note

Laws 1986, Ch. 232, § 4, effective January 1, 1987.

§ 41-1003. Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

Historical Note

Laws 1986, Ch. 232, § 4, effective January 1, 1987.
Amended by Laws 1998, Ch. 57, § 19, effective May 7, 1998.

§ 41-1004. Waiver

Except to the extent precluded by another provision of law, a person may waive any right conferred on that person by this chapter.

Historical Note

Laws 1986, Ch. 232, § 4, effective January 1, 1987.

§ 41-1005. Exemptions

A. This chapter does not apply to any:

1. Rule which relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals.
2. Order of the Arizona game and fish commission which opens, closes or alters seasons or establishes bag or possession limits for wildlife.
3. Rule relating to § 28-641 or to any rule regulating motor vehicle operation which relates to speed, parking, standing, stopping or passing enacted pursuant to title 28, chapter 3.
4. Rule concerning only the internal management of an agency which does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public.
5. Rule that only establishes specific prices to be charged for particular goods or services sold by an agency.
6. Rule concerning only the physical servicing, maintenance or care of agency owned or operated facilities or property.
7. Rule or substantive policy statement concerning inmates or committed youth of a correctional or detention facility in secure custody or patients admitted to a hospital, if made by the state department of corrections, the department of juvenile corrections, the board of executive clemency or the department of health services or a facility or hospital under the jurisdiction of the state department of corrections, the department of juvenile corrections or the department of health services.
8. Form whose contents or substantive requirements are prescribed by rule or statute, and instructions for the execution or use of the form.
9. Capped fee-for-service schedule adopted by the Arizona health care cost containment system administration pursuant to title 36, chapter 29.
10. Fees prescribed by § 6-125.
11. Order of the director of water resources adopting or modifying a management plan pursuant to title 45, chapter 2, article 9.
12. Fees prescribed by § 15-1425.
13. Fees established under § 3-1086.
14. Fee-for-service schedule adopted by the department of economic security pursuant to § 8-512.
15. Fees established under §§ 41-2144 and 41-2189.
16. Rule or other matter relating to agency contracts.
17. Fees established under § 32-2067 or 32-2132.
18. Rules made pursuant to § 5-111, subsection A.
19. Rules made by the Arizona state parks board concerning the operation of the Tonto natural bridge state park, the facilities located in the Tonto natural bridge state park and the entrance fees to the Tonto natural bridge state park.
20. Fees or charges established under § 41-511.05.
21. Emergency medical services protocols except as provided in § 36-2205, subsection C.
22. Fee schedules established pursuant to § 36-3409.
23. Procedures of the state transportation board as prescribed in § 28-7048.

24. Rules made by the state department of corrections.
25. Fees prescribed pursuant to § 32-1527.
26. Rules made by the department of economic security pursuant to § 46-805.
27. Schedule of fees prescribed by § 23-908.

B. Notwithstanding subsection A, paragraph 23 of this section, at such time as the federal highway administration authorizes the privatization of rest areas, the state transportation board shall make rules governing the lease or license by the department of transportation to a private entity for the purposes of privatization of a rest area.

C. Coincident with the making of a rule pursuant to an exemption under this section, the agency shall file a copy of the rule with the secretary of state for publication pursuant to § 41-1012.

D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona board of regents and the institutions under its jurisdiction, except that the Arizona board of regents shall make policies or rules for the board and the institutions under its jurisdiction which provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed.

E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona state schools for the deaf and the blind, except that the board of directors of all the state schools for the deaf and the blind shall adopt policies for the board and the schools under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies proposed for adoption.

Historical Note

Laws 1986, Ch. 232, § 4, effective January 1, 1987. Amended by Laws 1987, Ch. 58, § 9, effective April 4, 1987. Amended by Laws 1989, Ch. 88, § 1. Amended by Laws 1989, Ch. 164, § 2. Amended by Laws 1989, Ch. 167, § 1. Amended by Laws 1989, Ch. 230, § 60. Amended by Laws 1989, Ch. 243, § 4. Amended by Laws 1989, Ch. 287, § 4, effective January 1, 1990. Amended by Laws 1990, Ch. 48, § 2. Amended by Laws 1991, Ch. 32, § 1. Amended by Laws 1991, Ch. 119, § 5. Amended by Laws 1991, Ch. 157, § 10. Amended by Laws 1991, Ch. 210, § 17. Amended by Laws 1992, Ch. 239, § 1, effective September 30, 1992. Amended by Laws 1992, Ch. 301, § 57, effective July 10, 1992. Amended by Laws 1993, Ch. 204, § 13, effective April 21, 1993. Amended by Laws 1993, Ch. 255, § 83, effective January 1, 1994. Amended by Laws 1995, Ch. 251, § 3, effective July 13, 1995. Amended by Laws 1996, Ch. 184 § 16, effective April 15, 1996. Amended by Laws 1998, Ch. 57, § 20, effective May 7, 1998. Amended by Laws 1999, Ch. 160, § 4.

§ 41-1006. Employees providing agency assistance; identification and publication

Each state agency that employs more than one hundred persons shall publish annually in the register, in the state directory and in a telephone directory for Maricopa county the name or names of those employees who are designated by the agency to assist members of the public or regulated community in seeking information or assistance from the agency.

Historical Note

Laws 1994, Ch. 363, § 2, effective January 1, 1995. Section heading changed pursuant to § 41-1304.02.

§ 41-1007. Award of costs and fees against a department in administrative hearings; exceptions; definitions

A. Except as provided in § 42-139.14, subsection G, a hearing officer or administrative law judge shall award fees and other costs to any prevailing party in a contested case or an appealable agency action brought pursuant to any state administrative hearing authority. For purposes of this subsection, a person is considered to be a prevailing party only if both:
1. The agency's position was not substantially justified.
2. The person prevails as to the most significant issue or set of issues unless the reason that the person prevailed is due to an intervening change in the law.

B. Reimbursement under this section may be denied if during the course of the proceeding the party unduly and unreasonably protracted the final resolution of the matter.

C. A party that seeks an award of fees or other costs shall apply to the hearing officer or administrative law judge, within thirty days after the final decision or order, providing:
1. Evidence of the party's eligibility for the award.
2. The amount sought.
3. An itemized statement from the attorneys and experts stating:
   (a) The actual time spent representing the party.
   (b) The rate at which the fees were computed.

D. The award of reasonable attorney fees pursuant to subsection A of this section need not equal or relate to the attorney fees actually paid or contracted, but an award may not exceed the amount paid or agreed to be paid.

E. A decision of a hearing officer or administrative law judge under this section is subject to judicial review. If fees and other costs were denied by the hearing officer or administrative law judge because the party was not the prevailing party but the party prevails on appeal, the court may award fees and other costs for the proceedings before the hearing officer or administrative law judge if the court finds that fees and other costs should have been awarded under subsection A of this section.

F. The department shall pay the fees and costs awarded pursuant to this section from any monies appropriated to the department and available for that purpose, or from other operating costs of the department. If the department fails or refuses to pay the award within thirty days after the demand, and if no further review or appeals of the award are pending, the person may file a claim for the award with the department of administration which shall pay the claim within thirty days in the same manner as an uninsured property loss under chapter 3.1, article 1 of this title, except that the department shall be responsible for the total amount awarded and shall pay it from operating monies. If the department had appropriated monies available for paying the award at the time it failed or refused to pay, the legislature shall reduce the department's operating appropriation for the following fiscal year by the amount of the award and appropriate that amount to the department of administration as reimbursement for the loss.

G. This section does not apply to:
1. Any grievance and appeal procedure pursuant to title 36, chapter 29.
2. Any appeal procedure pursuant to chapter 4, article 6 of this title.
3. Any administrative appeal filed by an inmate in an Arizona state prison.

H. As used in this section:
1. "Department" includes a state agency, department, board or commission, and the universities.
2. "Party" includes an individual, partnership, corporation, association and public or private organization.

Historical Note

Amended by Laws 1998, Ch. 1, § 43, effective January 1, 1999. Amended by Laws 1998, Ch. 57, § 17 effective May 7, 1998. Amended by Laws 1998, Ch. 57, §§ 4 and 21, effective May 7, 1998.

§ 41-1008. Fees; specific statutory authority

A. Beginning on July 1, 1999, except as provided in subsection C, an agency shall not:
1. Charge or receive a fee or make a rule establishing a fee unless the fee for the specific activity is expressly authorized by statute or tribal state gaming compact.
2. Make a rule establishing a fee that is solely based on a statute that generally authorizes an agency to recover its costs or to accept gifts or donations.

B. Beginning on July 1, 1999, an agency shall identify the statute or tribal state gaming compact that authorizes the fee on documents relating to collection of the fee.

C. An agency authorized by statute or tribal state gaming compact to conduct background checks may charge a fingerprint fee without a statute expressly authorizing the fee.

Historical Note

Laws 1998, Ch. 57, § 22, effective May 7, 1998.

§ 41-1009. Inspections; applicability

A. An agency inspector or regulator who enters any premises of a regulated person for the purpose of conducting an inspection shall:
1. Present photo identification on entry of the premises.
2. On initiation of the inspection, state the purpose of the inspection and the legal authority for conducting the inspection.
3. Disclose any applicable inspection fees.
4. Afford an opportunity to have an authorized on-site representative of the regulated person accompany the agency inspector or regulator on the premises, except during confidential interviews.
5. Provide notice of the right to have:
   (a) Copies of any original documents taken by the agency during the inspection if the agency is permitted by law to take original documents.
   (b) A split of any samples taken during the inspection if the split of any samples would not prohibit an analysis from being conducted or render an analysis inconclusive.
   (c) Copies of any analysis performed on samples taken during the inspection.
6. Inform each person whose conversation with the agency inspector or regulator during the inspection is tape recorded that the conversation is being tape recorded.
7. Inform each person interviewed during the inspection that statements made by the person may be included in the inspection report.

B. On initiation of an inspection of any premises of a regulated person, an agency inspector or regulator shall provide the following in writing:
1. The rights described in subsection A of this section.
2. The name and telephone number of a contact person available to answer questions regarding the inspection.
3. The due process rights relating to an appeal of a final decision of an agency based on the results of the inspection, including the name and telephone number of a person to contact within the agency and any appropriate state government ombudsman.

C. An agency inspector or regulator shall obtain the signature of the regulated person or on-site representative of the regulated person on the writing prescribed in subsection B of this section indicating that the regulated person or on-site representative of the regulated person has read the writing prescribed in subsection B of this section and is notified of the regulated person's or on-site representative of the regulated person's inspection and due process rights. The agency shall maintain a copy of this signature with the inspection report and shall leave a copy with the regulated person or on-site representative of the regulated person. If a regulated person or on- site representative of the regulated person is not at the site or refuses to sign the writing prescribed in subsection B of this section, the agency inspector or regulator shall note that fact on the writing prescribed in subsection B of this section.

D. An agency that conducts an inspection shall give a copy of the inspection report to the regulated person or on-site representative of the regulated person either:
1. At the time of the inspection.
2. Notwithstanding any other state law, within thirty working days after the inspection.
3. As otherwise required by federal law.

E. The inspection report shall contain deficiencies identified during an inspection. Unless otherwise provided by law, the agency may provide the regulated person an opportunity to correct the deficiencies unless the agency determines that the deficiencies are:
1. Committed intentionally.
2. Not correctable within a reasonable period of time as determined by the agency.
3. Evidence of a pattern of noncompliance.
4. A risk to any person, the public health, safety or welfare or the environment.

F. If the agency allows the regulated person an opportunity to correct the deficiencies pursuant to subsection E of this section, the regulated person shall notify the agency when the deficiencies have been corrected. Within thirty days of receipt of notification from the regulated person that the deficiencies have been corrected, the agency shall determine if the regulated person is in substantial compliance and notify the regulated person whether or not the regulated person is in substantial compliance. If the regulated person fails to correct the deficiencies or the agency determines the deficiencies have not been corrected within a reasonable period of time, the agency may take any enforcement action authorized by law for the deficiencies.

G. An agency decision pursuant to subsection E or F of this section is not an appealable agency action.

H. At least once every month after the commencement of the inspection an agency shall provide a regulated person with an update on the status of any agency action resulting from an inspection of the regulated person. An agency is not required to provide an update after the regulated person is notified that no agency action will result from the agency inspection or after the completion of agency action resulting from the agency inspection.

I. This section does not authorize an inspection or any other act that is not otherwise authorized by law.

J. This section applies only to inspections necessary for the issuance of a license or to determine compliance with licensure requirements. This section does not apply:
1. To criminal investigations, investigations under tribal state gaming compacts and undercover investigations that are generally or specifically authorized by law.
2. If the inspector or regulator has reasonable suspicion to believe that the regulated person may be engaged in criminal activity.
3. To the Arizona peace officer standards and training board established by § 41-1821.

K. If an inspector or regulator gathers evidence in violation of this section, the violation shall not be a basis to exclude the evidence in a civil or administrative proceeding, if the penalty sought is the denial, suspension or revocation of the regulated

person's license or a civil penalty of more than one thousand dollars.

L. Failure of an agency, board or commission employee to comply with this section:
1. Constitutes cause for disciplinary action or dismissal in accordance with § 41-770
2. Shall be considered by the judge and administrative law judge as grounds for reduction of any fine or penalty.

M. An agency may make rules to implement subsection A, paragraph 5 of this section.

N. Nothing in this section shall be used to exclude evidence in a criminal proceeding.

Historical Note

Laws 1998, Ch. 57, § 22, effective May 7, 1998. Amended by Laws 2000, Ch. 113, § 166, effective July 18, 2000.

§ 41-1010. Complaints; public record

Notwithstanding any other law, a person shall disclose the person's name during the course of reporting an alleged violation of law or rule. During the course of an investigation or enforcement action, the name of the complainant shall be a public record unless the affected agency determines that the release of the complainant's name may result in substantial harm to any person or to the public health or safety.

Historical Note

Laws 1998, Ch. 57, § 23, effective May 7, 1998.

ARTICLE 2. PUBLICATION OF AGENCY RULES

§ 41-1011. Publication and distribution of code and register

A. The secretary of state is responsible for the publication and distribution of the code and the register.

B. The secretary of state shall prescribe a uniform numbering system, form and style for all rules filed with and published by that office. The secretary of state shall reject rules if they are not in compliance with the prescribed numbering system, form and style.

C. The secretary of state shall prepare, arrange and correlate all rules and other text as necessary for the publication of the code and the register. The secretary of state may not alter the sense, meaning or effect of any rule but may renumber rules and parts of rules, rearrange rules, change reference numbers to agree with renumbered rules and parts of rules, substitute the proper rule number for "the preceding rule" and similar terms, delete figures if they are merely a repetition of written words, change capitalization for the purpose of uniformity and correct manifest clerical or typographical errors. With the consent of the attorney general the secretary of state may remove from the code a provision of a rule that a court of final appeal declares unconstitutional or otherwise invalid and a rule made by an agency that is abolished if the rule is not transferred to a successor agency.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 1998, Ch. 57, § 24, effective May 7, 1998.

§ 41-1012. Code; publication of rules; distribution

A. The code shall contain the full text of each final rule filed with the secretary of state and each rule made pursuant to a statutory exemption from the applicability of this chapter.

B. The secretary of state shall publish, in loose-leaf form, at least once every quarter all final rules and rules made pursuant to a statutory exemption from the applicability of this chapter. Publication of a rule by the secretary of state as provided in this section constitutes prima facie evidence of the making and filing of the rule pursuant to this chapter or the making of the rule pursuant to a statutory exemption from the applicability of this chapter.

C. The secretary of state may contract for the printing of the code on terms most advantageous to this state.

D. The code shall be available by subscription and for single copy purchase. The charge for each code or periodic subscription shall be a reasonable charge, not to exceed all costs of production and distribution of the code.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 1992, Ch. 239, § 2, effective September 30, 1992. Amended by Laws 1994, Ch. 363, § 3, effective January 1, 1995. Amended by Laws 1998, Ch. 57, § 25, effective May 7, 1998.

§ 41-1013. Register

A. The secretary of state shall publish the register at least once each month, including the information which is provided under subsection B of this section and which is filed with the secretary of state during the preceding thirty days. The secretary of state shall publish an index to the register at least twice each year.

B. The register shall contain:
1. A schedule of the time, date and place of all hearings on proposed repeals, makings or amendments of rules.
2. Each governor's executive order.
3. Each governor's proclamation of general applicability, and each statement filed by the governor in granting a commutation, pardon or reprieve or stay or suspension of execution where a sentence of death is imposed.
4. A summary of each attorney general's opinion.
5. Each governor's appointment of state officials and board and commission members.
6. A table of contents.
7. The notice and agency summary of each docket opening.
8. The full text and accompanying preamble of each proposed rule.
9. The full text and accompanying preamble of each final rule.
10. The full text and accompanying preamble of each emergency rule.
11. Supplemental notices of a proposed rule or summary rule.
12. A summary of council action on each rule.
13. The full text of any exempt final rule filed with the secretary of state pursuant to § 41-1005, subsection C.
14. The identification and a summary of substantive policy statements and notice and a summary of any guidance document publication or revision submitted by an agency.
15. Notices of oral proceedings, public workshops or other meetings on an open rule making docket.

C. The register shall be available by subscription and for single copy purchase. The charge for each register or periodic subscription shall be a reasonable charge, not to exceed all costs of production and distribution of the register.

D. For purposes of this section, full text publication in the register includes all new, amended or added language and such existing language as the proposing agency deems necessary for a proper understanding of the proposed rule. Rules that are undergoing extensive revision may be reprinted in whole. Existing rule language not required for understanding shall be omitted and marked "no change".

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 1990, Ch. 178, § 2. Amended by Laws 1992, Ch. 239, § 3, effective September 30, 1992.

Amended by Laws 1994, Ch. 363, § 4, effective January 1, 1995. Amended by Laws 1998, Ch. 57, § 26, effective May 7, 1998.

ARTICLE 3. RULE MAKING

§ 41-1021. Public rule making docket; notice

A. Each agency shall establish and maintain a current, public rule making docket for each pending rule making proceeding. A rule making proceeding is pending from the time the agency begins to consider proposing the rule under § 41-1022 until any one of the following occurs:
1. The time the rule making proceeding is terminated by the agency indicating in the rule making docket that the agency is no longer actively considering proposing the rule.
2. One year after the notice of rule making docket opening is published in the register if the agency has not filed a notice of proposed rulemaking with the secretary of state pursuant to § 41-1022.
3. The rule becomes effective.
4. One year after the notice of the proposed rule making is published in the register if the agency has not submitted the rule to the council for review and approval.
5. Publication of a notice of termination.

B. For each rule making proceeding, the docket shall indicate all of the following:
1. The subject matter of the proposed rule.
2. A citation to all published notices relating to the proceeding.
3. The name and address of agency personnel with whom persons may communicate regarding the rule.
4. Where written submissions on the proposed rule may be inspected.
5. The time during which written submissions may be made and the time and place where oral comments may be made.
6. Where a copy of the economic, small business and consumer impact statement and the minutes of the pertinent council meeting may be inspected.
7. The current status of the proposed rule.
8. Any known timetable for agency decisions or other action in the proceeding.
9. The date the rule was sent to the council.
10. The date of the rule's filing and publication.
11. The date the rule was approved by the council.
12. When the rule will become effective.

C. The agency shall provide public notice of the establishment of a rule making docket by causing a notice of docket opening to be published in the register, including the information set forth in subsection B, paragraphs 1, 2, 3, 5 and 8 of this section.

D. An agency may appoint formal advisory committees to comment, before publication of a notice of proposed rule making under § 41-1022, on the subject matter of a possible rule making under active consideration within the agency. The membership of these committees shall be published at the time of formation and annually thereafter in the register. Members of these committees are not eligible to receive compensation except as otherwise provided by law.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 1992, Ch. 239, § 4, effective September 30, 1992. Amended by Laws 1994, Ch. 363, § 5, effective January 1, 1995. Amended by Laws 1996, Ch. 102, § 38, effective April 9, 1996. Amended Laws 1998, Ch. 57, § 27, effective May 7, 1998.

§ 41-1021.01. Permissive examples

An agency may include a diagram, example, table, chart or formula in a rule, preamble, economic impact, small business and consumer impact statement or concise explanatory statement to the extent that it assists in making the document understandable by the persons affected by the rule.

Historical Note

Added by Laws 1992, Ch. 239, § 5, effective September 30, 1992. Section repealed by Laws 1994, Ch. 363, § 6, effective January 1, 1995; new Section adopted pursuant to Laws 1994, Ch. 363, § 7, effective January 1, 1995.

§ 41-1021.02. State agencies; annual regulatory agenda

A. On or before December 1 of each year, each agency, except for a self-supporting regulatory board as defined in section 41-1092, shall prepare and make available to the public the regulatory agenda that the agency expects to follow during the next calendar year.

B. The regulatory agenda shall include all of the following:
1. A notice of docket openings.
2. A notice of any proposed rule making, including potential sources of federal funding for each proposed rule making.
3. A review of existing rules.
4. A notice of final rulemaking.

C. The regulatory agenda shall also provide for the following information:
1. Any rule making terminated during the current calendar year.
2. Any privatization option and nontraditional regulatory approach being considered by the agency.

D. This section does not prohibit an agency from undertaking any rule making action even if that action has not been included in the agency's annual regulatory agenda.

Historical Note

Added by Laws 2002, Ch. 334, § 3, effective August 22, 2002.

§ 41-1022. Notice of proposed rule making, amendment or repeal; contents of notice

A. Before rule making, amendment or repeal, the agency shall file a notice of the proposed action with the secretary of state. The notice shall include:
1. The preamble.
2. The exact wording of the rule.

B. The secretary of state shall include in the next edition of the register the information in the notice under subsection A of this section.

C. At the same time the agency files a notice of the proposed rule making with the secretary of state, the agency shall notify by regular mail, telefacsimile or electronic mail each person who has made a timely request to the agency for notification of the proposed rule making and to each person who has requested notification of all proposed rule makings. An agency may provide the notification prescribed in this subsection in a periodic agency newsletter. An agency may purge its list of persons requesting notification of proposed rule makings once each year.

D. Before commencing any proceedings for rule making, amendment or repeal, an agency shall allow at least thirty days to elapse after the publication date of the register in which the notice of the proposed rule making, amendment or repeal is contained.

E. If, as a result of public comments or internal review, an agency determines that a proposed rule requires substantial change pursuant to § 41-1025, the agency shall issue a supplemental notice containing the changes in the proposed rule. The agency

shall provide for additional public comment pursuant to § 41-1023.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 1992, Ch. 239, § 6, effective September 30, 1992. Amended by Laws 1994, Ch. 363, § 8, effective January 1, 1995. Amended by Laws 1998, Ch. 57, § 28, effective May 7, 1998.

§ 41-1023. Public participation; written statements; oral proceedings

A. After providing notice of docket openings, an agency may meet informally with any interested party for the purpose of discussing the proposed rule making action. The agency may solicit comments, suggested language or other input on the proposed rule. The agency may publish notice of these meetings in the register.

B. For at least thirty days after publication of the notice of the proposed rule making, an agency shall afford persons the opportunity to submit in writing statements, arguments, data and views on the proposed rule, with or without the opportunity to present them orally.

C. An agency shall schedule an oral proceeding on a proposed rule if, within thirty days after the published notice of proposed rule making, a written request for an oral proceeding is submitted to the agency personnel listed pursuant to § 41-1021, subsection B.

D. An oral proceeding on a proposed rule may not be held earlier than thirty days after notice of its location and time is published in the register. The agency shall determine a location and time for the oral proceeding which affords a reasonable opportunity to persons to participate. The oral proceeding shall be conducted in a manner that allows for adequate discussion of the substance and the form of the proposed rule, and persons may ask questions regarding the proposed rule and present oral argument, data and views on the proposed rule.

E. The agency, a member of the agency or another presiding officer designated by the agency shall preside at an oral proceeding on a proposed rule. If the agency does not preside, the presiding official shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding. Oral proceedings must be open to the public and recorded by stenographic or other means.

F. Each agency may make rules for the conduct of oral rule making proceedings. Those rules may include provisions calculated to prevent undue repetition in the oral proceedings.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 1992, Ch. 239, § 7, effective September 30, 1992. Amended by Laws 1994, Ch. 363, § 9, effective January 1, 1995. Amended by Laws 1998, Ch. 57, § 29, effective May 7, 1998.

§ 41-1024. Time and manner of rule making

A. An agency may not submit a rule to the council until the rule making record is closed.

B. Within one hundred twenty days after the close of the record on the proposed rule making, an agency shall take one of the following actions:

1. Submit the rule to the council, or, if the rule is exempt pursuant to § 41-1057, to the attorney general.
2. Terminate the proceeding by publication of a notice to that effect in the register.

C. Before submitting a rule to the council or the attorney general, an agency shall consider the written submissions the oral submissions or any memorandum summarizing oral submissions, and the economic, small business and consumer impact statement regarding the rule or information in the preamble.

D. Within the scope of its delegated authority, an agency may use its own experience, technical competence, specialized knowledge and judgment in the making of a rule.

E. Unless exempted by § 41-1005 or 41-1057 or unless the rule is an emergency rule made pursuant to § 41-1026, if the agency chooses to make the rule, the agency shall submit a rule package to the council and to the committee. The rule package shall include:

1. The preamble.
2. The exact words of the rule, including existing language and any deletions.
3. The economic, small business and consumer impact statement.

F. If the rule is exempt pursuant to § 41-1005, the agency shall file it as a final rule with the secretary of state.

G. If the rule is exempt from council approval, pursuant to § 41-1057, the agency shall submit the rule package set forth in subsection E of this section to the attorney general for approval pursuant to § 41-1044.

H. An agency shall not file a final rule with the secretary of state without prior approval from the council, unless the final rule is exempted pursuant to § 41-1005 or 41-1057 or the rule is an emergency rule made pursuant to § 41-1026 or a summary proposed rule made pursuant to § 41-1027.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 1994, Ch. 363, § 10, effective January 1, 1995. Amended by Laws 1995, Ch. 251, § 4, effective July 13, 1995. Amended by Laws 1996, Ch. 102, § 39, effective April 9, 1996. Amended by Laws 1998, Ch. 57, § 30 effective May 7, 1998. Amended by Laws 2002, Ch. 334, § 4, effective August 22, 2002.

§ 41-1025. Variance between rule and published notice of proposed rule

A. An agency may not submit a rule to the council that is substantially different from the proposed rule contained in the notice of proposed rule making or a supplemental notice filed with the secretary of state pursuant to § 41-1022. However, an agency may terminate a rule making proceeding and commence a new rule making proceeding for the purpose of making a substantially different rule.

B. In determining whether a rule is substantially different from the published proposed rule on which it is required to be based, all of the following must be considered:

1. The extent to which all persons affected by the rule should have understood that the published proposed rule would affect their interests.
2. The extent to which the subject matter of the rule or the issues determined by that rule are different from the subject matter or issues involved in the published proposed rule.
3. The extent to which the effects of the rule differ from the effects of the published proposed rule if it had been make instead.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 1994, Ch. 363, § 11, effective January 1, 1995. Amended by Laws 1998, Ch. 57, § 31, effective May 7, 1998.

§ 41-1026. Emergency rule making, amendment or repeal

A. If an agency makes a finding that a rule is necessary as an emergency measure, the rule may be made, amended or repealed as an emergency measure, without the notice prescribed by §§ 41-1021 and 41-1022 and prior review by the council, if the rule is first approved by the attorney general and filed with the secretary of state. The attorney general may not approve the making, amendment or repeal of a rule as an emergency measure if the emergency situation is created due to the agency's delay or inaction and the emergency situation could have been averted by timely compliance with the notice and public participation provisions of this chapter, unless the agency submits substantial evidence that the rule is necessary as an emergency measure to do any of the following:
1. Protect the public health, safety or welfare.
2. Comply with deadlines in amendments to an agency's governing law or federal programs.
3. Avoid violation of federal law or regulation or other state law.
4. Avoid an imminent budget reduction.
5. Avoid serious prejudice to the public interest or the interest of the parties concerned.

B. Within sixty days of receipt, the attorney general shall review the demonstration of emergency and the rule in accordance with the standards prescribed in § 41-1044.

C. After the rule is filed with the secretary of state, the secretary of state shall publish the rule in the register as provided in § 41-1013.

D. A rule made, amended or repealed pursuant to this section is valid for one hundred eighty days after the filing of the rule with the secretary of state and may be renewed for one more one hundred eighty day period if all of the following occur:
1. The agency determines that the emergency situation still exists.
2. The agency follows the procedures prescribed in this section.
3. The rule is approved by the attorney general pursuant to this section.
4. The agency has issued the rule as a proposed rule or has issued an alternative proposed rule pursuant to § 41-1022.
5. The agency seeks approval of the renewal from the attorney general before the expiration of the preceding one hundred eighty day period.
6. The agency files notice of the renewal and any required attorney general approval with the secretary of state and notice is published in the register.

E. A rule that is made pursuant to this chapter and that replaces a rule made, amended or repealed pursuant to this section shall expressly repeal the rule replaced if it has not expired.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 1994, Ch. 363, § 12, effective January 1, 1995. Amended by Laws 1998, Ch. 57, § 32, effective May 7, 1998. Amended by Laws 2000, Ch. 374, § 1, effective July 18, 2000.

§ 41-1026.01. Emergency adoption, amendment or termination of delegation agreements; definition

A. If a delegating agency makes a written finding that a delegation agreement is necessary as an emergency measure, the delegation agreement may be adopted, amended or terminated as an emergency measure, without complying with the public notice and participation provisions of this article. An agency may not adopt, amend or terminate a delegation agreement as an emergency measure if the emergency situation is created due to the agency's delay or inaction and the emergency situation could have been averted by timely compliance with the public notice and participation provisions of this article, unless the agency can present substantial evidence that failure to adopt, amend or terminate the delegation agreement as an emergency measure will result in imminent substantial peril to the public health, safety or welfare.

B. The agency shall file with the secretary of state a summary of the emergency delegation agreement. The summary shall provide the name of the person to contact in the agency with questions or comments. The secretary of state shall publish the summary in the next register.

C. The delegation agreement adopted, amended or terminated pursuant to this section is valid for one hundred eighty days after the filing of the agreement with the secretary of state and may be renewed for one or two more one hundred eighty day periods if all of the following occur:
1. The agency determines that the emergency situation still exists for each renewal.
2. The agency follows the procedures prescribed by this section for each renewal.
3. The agency has begun the public comment and participation process required by this section.
4. The agency makes a finding for an extension of time before the expiration of the preceding one hundred and eighty day period.
5. The agency files notice of the renewal with the secretary of state and notice is published in the register.

D. For purposes of this section, "emergency" means a situation which warrants the adoption of a delegation agreement without compliance with the public notice and participation provisions prescribed in this article because the adoption, amendment or termination of the delegation agreement is necessary for immediate preservation of the public health, safety or welfare, and the public notice and participation requirements of this article are impracticable.

Historical Note

Adopted by Laws 1994, Ch. 363, § 13, effective January 1, 1995.

§ 41-1027. Summary rule making

A. An agency may use the summary rule making procedure set forth in this section in place of the rule making procedure set forth in §§ 41-1021 through 41-1024 for the following actions:
1. Repeals of rules made obsolete by repeal or supersession of an agency's statutory authority.
2. Making, amendment and repeal of rules that repeat verbatim existing statutory authority granted to the agency.

B. An agency shall initiate summary rule making by filing the proposed summary rule with the council and the secretary of state for publication in the next register. The notice filed with the secretary of state shall include the preamble.

C. The agency shall forward copies of the notice filed with the secretary of state pursuant to subsection B of this section to the council.

D. The proposed summary rule takes interim effect on the date of publication in the register.

E. Within ninety days after publication in the register, after consideration of any comments, the agency shall submit to the council a summary rule, preamble, concise explanatory statement and economic, small business and consumer impact statement.

F. The summary rule making procedures of this section are not available for rules exempted from council approval pursuant to § 41-1057.

Historical Note

Former Section 41-1027 renumbered to 41-1036 by Laws

1994, Ch. 363, § 14, effective January 1, 1995; new § 41-1027 adopted by Laws 1994, Ch. 363, § 15, effective January 1, 1995. Amended by Laws 1998, Ch. 57, § 33 effective May 7, 1998.

§ 41-1028. Incorporation by reference

A. An agency may incorporate by reference in its rules and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation of an agency of the United States or of this state or a nationally recognized organization or association, if incorporation of its text in agency rules would be unduly cumbersome, expensive or otherwise inexpedient.

B. The reference in the agency rules shall fully identify the incorporated matter by location, date and otherwise and shall state that the rule does not include any later amendments or editions of the incorporated matter.

C. An agency may incorporate by reference such matter in its rules only if the agency, organization or association originally issuing that matter makes copies of it readily available to the public for inspection and reproduction.

D. The rules shall state where copies of the incorporated matter are available from the agency issuing the rule and from the agency of the United States or this state or the organization or association originally issuing the matter.

E. An agency may incorporate later amendments or editions of the incorporated matter only after compliance with the rule making requirements of this chapter.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 1994, Ch. 363, § 16, effective January 1, 1995. Amended by Laws 1998, Ch. 57, § 34, effective May 7, 1998. Amended by Laws 2003, Ch. 104, § 26, effective September 18, 2003.

§ 41-1029. Agency rule making record

A. An agency shall maintain an official rule making record for each rule it proposes by publication in the register of a notice of proposed rule making and each final rule filed in the office of the secretary of state. The record and matter incorporated by reference must be available for public inspection.

B. The agency rule making record shall contain all of the following:

1. A copy of the notice initially filed in the office of the secretary of state.
2. Copies of all publications in the register with respect to the rule or the proceeding on which the rule is based.
3. Copies of any portions of the agency's rule making docket containing entries relating to the rule or the proceeding on which the rule is based.
4. All written petitions, requests, submissions and comments received by the agency and all other written materials considered or prepared by the agency in connection with the rule or the proceeding on which the rule is based.
5. Any official transcript of oral presentations made in the proceeding on which the rule is based, or if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by a presiding official summarizing the contents of those presentations.
6. A copy of all materials submitted to the council, including the economic, small business and consumer impact statement and the minutes of the council meeting at which the rule was reviewed.
7. A copy of the final rule and preamble.
8. Information requested regarding the experience, technical competence, specialized knowledge and judgment of an agency if the agency relies on § 41-1024, subsection D in the making of a rule and a request is made.

C. On judicial review, the record required by this section constitutes the official agency rule making record with respect to a rule. Except as provided in § 41-1036 or otherwise required by a provision of law, the agency rule making record need not constitute the exclusive basis for agency action on that rule or for judicial review of that rule.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 1994, Ch. 363, § 17, effective January 1, 1995. Amended by Laws 1998, Ch. 57, § 35, effective May 7, 1998. Amended by Laws 2002, Ch. 334, § 5, effective August 22, 2002.

§ 41-1030. Invalidity of rules not made according to this chapter; prohibited agency action

A. A rule is invalid unless it is made and approved in substantial compliance with §§ 41-1021 through 41-1029 and articles 4, 4.1 and 5 of this chapter, unless otherwise provided by law.

B. An agency shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact. A general grant of authority in statute does not constitute a basis for imposing a licensing requirement or condition unless a rule is made pursuant to that general grant of authority that specifically authorizes the requirement or condition.

C. An agency shall not:

1. Make a rule under a specific grant of rule making authority that exceeds the subject matter areas listed in the specific statute authorizing the rule.
2. Make a rule under a general grant of rule making authority to supplement a more specific grant of rule making authority.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 1992, Ch. 239, § 8, effective September 30, 1992. Amended by Laws 1994, Ch. 363, § 18, effective January 1, 1995. Amended by Laws 1995, Ch. 251, § 5, effective July 13, 1995. Amended by Laws 1998, Ch. 57, § 36, effective May 7, 1998. Amended by Laws 2002, Ch. 334, § 6, effective August 22, 2002.

§ 41-1031. Filing rules and preamble with secretary of state; permanent record

A. Following the filing of a rule made pursuant to an exemption to this chapter or following approval and filing of a rule and preamble and an economic, small business and consumer impact statement by the council as provided in article 5 of this chapter or by the attorney general as provided in article 4 of this chapter, the secretary of state shall affix to each rule document, preamble and economic, small business and consumer impact statement the time and date of filing. A rule is not final until the secretary of state affixes the time and date of filing to the rule document as provided in this section.

B. The secretary of state shall keep a permanent record of rules, preambles and economic, small business and consumer impact statements filed with the office.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 1992, Ch. 239, § 9, effective September 30, 1992. Amended by Laws 1994, Ch. 363, § 19, effective January 1, 1995. Amended by Laws 1996, Ch. 102, § 40, effective April 9, 1996. Amended by Laws 1998, Ch. 57, § 37, effective May 7, 1998. Amended by Laws 2002, Ch. 334, § 7, effective August 22, 2002.

§ 41-1032. Effective date of rules

A. A rule becomes effective sixty days after a certified original and two copies of the rule and preamble are filed in the office of the secretary of state and the time and date are affixed as provided in § 41-1031, unless the rule making agency includes in the preamble information that demonstrates that the rule needs to be effective immediately on filing in the office of the secretary of state and the time and date are affixed as provided in section 41-1031. A rule may only be effective immediately for any of the following reasons:

1. To preserve the public peace, health or safety.
2. To avoid a violation of federal law or regulation or state law, if the need for an immediate effective date is not created due to the agency's delay or inaction.
3. To comply with deadlines in amendments to an agency's governing statute or federal programs, if the need for an immediate effective date is not created due to the agency's delay or inaction.
4. To provide a benefit to the public and a penalty is not associated with a violation of the rule.
5. To adopt a rule that is less stringent than the rule that is currently in effect and that does not have an impact on the public health, safety, welfare or environment, or that does not affect the public involvement and public participation process.

B. Notwithstanding subsection A of this section, a rule making agency may specify an effective date more than sixty days after the filing of the rule in the office of the secretary of state if the agency determines that good cause exists for and the public interest will not be harmed by the later date.

C. This section does not affect the validity of an existing rule until the new or amended rule that is filed with the secretary of state is effective pursuant to this section.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 1998, Ch. 57, § 38, effective May 7, 1998. Amended by Laws 2002, Ch. 334, § 8, effective August 22, 2002.

§ 41-1033. Petition for a rule or review of a practice or policy

A. Any person, in a manner and form prescribed by the agency, may petition an agency requesting the making of a final rule or a review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule. The petition shall clearly state the rule, agency practice or substantive policy statement which the person wishes the agency to make or review. Within sixty days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for denial, initiate rule making proceedings in accordance with this chapter or, if otherwise lawful, make a rule.

B. A person may appeal to the council the agency's final decision within thirty days after the agency gives written notice pursuant to subsection A. The appeal shall be limited to whether an existing agency practice or substantive policy statement constitutes a rule. The council shall place this appeal on the agenda of its next meeting if at least three council members make such a request of the council chairman within two weeks after the filing of the appeal.

C. An agency practice or substantive policy statement appealed to and considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council ultimately decides the agency practice or statement constitutes a rule, the practice or statement shall be considered void.

D. A decision by the agency pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to § 41-1034.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 1995, Ch. 251, § 6, effective July 13, 1995. Amended by Laws 1998, Ch. 57, § 39, effective May 7, 1998. Amended by Laws 2000, Ch. 374, § 2, effective July 18, 2000.

§ 41-1034. Declaratory judgment

A. Any person who is or may be affected by a rule may obtain a judicial declaration of the validity of the rule by filing an action for declaratory relief in the superior court in Maricopa county in accordance with title 12, chapter 10, article 2.

B. Any person who is or may be affected by an existing agency practice or substantive policy statement that the person alleges to constitute a rule may obtain a judicial declaration on whether the practice or substantive policy statement constitutes a rule by filing an action for declaratory relief in the superior court in Maricopa county in accordance with title 12, chapter 10, article 2.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 2000, Ch. 374, § 3, effective July 18, 2000.

§ 41-1035. Rules affecting small businesses; reduction of rule impact

If an agency proposes a new rule or an amendment to an existing rule which may have an impact on small businesses, the agency shall consider each of the methods described in this section for reducing the impact of the rule making on small businesses. The agency shall reduce the impact by using one or more of the following methods, if it finds that the methods are legal and feasible in meeting the statutory objectives which are the basis of the proposed rule making:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
4. Establish performance standards for small businesses to replace design or operational standards in the rule.
5. Exempt small businesses from any or all requirements of the rule.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987.

§ 41-1036. Preamble; justifications for rule making

Only the reasons contained in the preamble may be used by any party as justifications for the making of the rule in any proceeding in which its validity is at issue.

Historical Note

Renumbered from § 41-1027 by Laws 1994, Ch. 363, § 14, effective January 1, 1995; amended by Laws 1994, Ch. 363, § 20, effective January 1, 1995. Amended by Laws 1998, Ch. 57, § 40, effective May 7, 1998. Amended by Laws 2002, Ch. 334, § 9, effective August 22, 2002.

ARTICLE 4. ATTORNEY GENERAL REVIEW OF RULE MAKING

§ 41-1041. Repealed

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 1992, Ch. 239, § 10, effective September 30, 1992. Repealed by Laws 1994, Ch. 363, § 21, effective January 1, 1995.

§ 41-1044. Attorney general review of certain exempt rules

A. The attorney general shall review rules that are exempt pursuant to § 41-1057.

B. Rules that are exempt pursuant to § 41-1057 shall not be filed with the secretary of state unless the attorney general approves the rule as:
1. To form.
2. Clear, concise and understandable.
3. Within the power of the agency to make and within the enacted legislative standards.
4. Made in compliance with the appropriate procedures.

C. The attorney general shall not approve a rule with an immediate effective date unless the attorney general determines that the rule complies with section 41-1032.

D. Within sixty days of receipt of the rule the attorney general shall endorse the attorney general's approval on the rule package. After approval, the attorney general shall file the rule package with the secretary of state.

E. If the attorney general determines that the rule does not comply with subsection B of this section, the attorney general shall endorse the attorney general's disapproval of the rule on the rule package, state the reasons for the disapproval and within sixty days after receipt of the rule return the rule package to the agency that made the rule.

Historical Note

Adopted by Laws 1994, Ch. 363, § 22, effective January 1, 1995. Amended by Laws 1998, Ch. 57, § 41, effective May 7, 1998. Amended by Laws 2002, Ch. 334, § 10, effective August 22, 2002.

ARTICLE 4.1. ADMINISTRATIVE RULES OVERSIGHT COMMITTEE

§ 41-1046. Repealed

Historical Note

Added by Laws 1995, Ch. 251, § 7, effective July 13, 1995. Repealed by Laws 1995, Ch. 251, § 22, effective December 31, 1998.

§ 41-1047. Committee review of rules; practices alleged to constitute rules; substantive policy statements

The committee may review any proposed or final rule, summary rule, agency practice alleged to constitute a rule or substantive policy statement for conformity with statute and legislative intent. The committee may hold hearings on whether a proposed or final rule, summary rule, agency practice alleged to constitute a rule or substantive policy statement is consistent with statute and legislative intent. The committee may comment to the agency, attorney general or council on whether the proposed or final rule, summary rule, agency practice alleged to constitute a rule or substantive policy statement is consistent with statute or legislative intent. The committee may designate a representative to testify before the council. The council shall consider the comments of the committee and any testimony. The administrative records shall contain the comments of the committee and any testimony.

Historical Note

Added by Laws 1995, Ch. 251, § 7, effective July 13, 1995. Amended by Laws 1998, Ch. 57, § 42, effective May 7, 1998.

§ 41-1048. Committee review of duplicative or onerous statutes, rules, practices alleged to constitute rules and substantive policy statements

A. The committee shall receive complaints concerning statutes, rules, agency practices alleged to constitute rules and substantive policy statements that are alleged to be duplicative or onerous. The committee may review any statutes, rules, agency practices alleged to constitute rules or substantive policy statements alleged to be duplicative or onerous and may hold hearings regarding the allegations. The committee may comment to an agency, the attorney general, the council or the legislature on whether the statutes, rules, agency practices alleged to constitute rules or substantive policy statements are duplicative or onerous. The comments may include committee recommendations for alleviating the duplicative or onerous aspects of the statutes, rules, agency practices alleged to constitute rules and substantive policy statements.

B. The committee shall prepare a report to the legislature by December 1 of each year recommending legislation to alleviate the effects of duplicative or onerous statutes, rules, agency practices alleged to constitute rules and substantive policy statements.

C. This section applies to all statutes, rules, agency practices alleged to constitute rules and substantive policy statements, regardless of whether the statutes, rules, agency practices alleged to constitute rules or substantive policy statements were enacted or made before or after January 1, 1996.

Historical Note

Added by Laws 1995, Ch. 251, § 7, effective July 13, 1995. Amended by Laws 1998, Ch. 57, § 43, effective May 7, 1998.

ARTICLE 5. GOVERNOR'S REGULATORY REVIEW COUNCIL

§ 41-1051. Governor's regulatory review council; membership; terms; compensation; powers

A. A governor's regulatory review council is established that consists of six members who are appointed by the governor and who serve at the pleasure of the governor, and the director of the department of administration or the assistant director of the department of administration who is responsible for administering the council. The director or assistant director is an ex officio member and chairperson of the council. The council shall elect a vice-chairperson to serve as chairperson in the chairperson's absence. The governor shall appoint at least one member who represents the public interest, at least one member who represents the business community, one member from a list of three persons who are not legislators submitted by the president of the senate and one member from a list of three persons who are not legislators submitted by the speaker of the house of representatives. At least one member of the council shall be an attorney licensed to practice law in this state. The governor shall appoint the members of the council for staggered terms of three years. A vacancy occurring during the term of office of any member shall be filled by appointment by the governor for the unexpired portion of the term in the same manner as provided in this section.

B. The council shall meet at least once a month at a time and place set by the chairperson and at other times and places as the chairperson deems necessary.

C. Members of the council are eligible to receive compensation in an amount of two hundred dollars for each day on which the

council meets and reimbursement of expenses pursuant to title 38, chapter 4, article 2.

D. The chairperson, subject to chapter 4, articles 5 and 6 of this title, shall employ, determine the conditions of employment and specify the duties of administrative, secretarial and clerical employees as the chairperson deems necessary.

E. The council may make rules pursuant to this chapter to carry out the purposes of this chapter.

F. The council shall make the following information available to the public on request and on the council's web site:

1. A list of agency rules approved or returned pursuant to § 41-1052.
2. A list of agencies not certifying compliance as provided in § 41-1091.
3. A list of agencies that report a lack of progress pursuant to § 41-1056, subsection H.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 1994, Ch. 363, § 23, effective January 1, 1995. Amended by Laws 1995, Ch. 251, § 8, effective July 13, 1995. Amended by Laws 1997, Ch. 59 § 1, effective July 21, 1997. Amended by Laws 1998, Ch. 57, § 44, effective May 7, 1998. Amended by Laws 1999, Ch. 300, § 23. Amended by Laws 2003, Ch. 104, § 27, effective September 18, 2003.

§ 41-1052. Council review and approval

A. Before filing a final rule with the secretary of state, an agency shall prepare, transmit to the council and the committee and obtain the council's approval of the rule and its preamble and economic, small business and consumer impact statement which meets the requirements of § 41-1055.

B. Within ninety days of receipt of the rule, preamble and economic, small business and consumer impact statement, the council shall review and approve or return, in whole or in part, the rule, preamble or economic, small business and consumer impact statement. An agency may resubmit a rule, preamble or economic, small business and consumer impact statement if the council returns the rule, economic, small business and consumer impact statement or preamble, in whole or in part, to the agency.

C. The council shall not approve the rule unless:

1. The economic, small business and consumer impact statement contains the information, data and analysis prescribed by this article.
2. The economic, small business and consumer impact statement is generally accurate.
3. The probable benefits of the rule outweigh the probable costs of the rule.
4. The rule is clear, concise and understandable.
5. The rule is not illegal, inconsistent with legislative intent or beyond the agency's statutory authority.
6. The agency adequately addressed the comments on the proposed rule and any supplemental proposals.
7. The rule is not a substantial change, considered as a whole, from the proposed rule and any supplemental notices.
8. The preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.

D. The council shall verify that a rule with new fees does not violate § 41- 1008. The council shall not approve a rule that contains a fee increase unless two- thirds of the voting quorum present vote to approve the rule.

E. The council shall verify that a rule with an immediate effective date complies with section 41-1032. The council shall not approve a rule with an immediate effective date unless two-thirds of the voting quorum present vote to approve the rule.

F. The council may require a representative of an agency whose rule is under examination to attend a council meeting and answer questions. The council may also communicate to the agency its comments on any rule, preamble or economic, small business and consumer impact statement and require the agency to respond to its comments in writing.

G. A person may submit written comments to the council that are within the scope of subsection C, D or E of this section. The council may permit oral comments at a council meeting within the scope of subsection C, D or E of this section.

H. If the agency makes a good faith effort to comply with the requirements prescribed in this article and has explained in writing the methodology used to produce the economic, small business and consumer impact statement, the rule may not be invalidated after it is finalized on the ground that the contents of the economic, small business and consumer impact statement are insufficient or inaccurate or on the ground that the council erroneously approved the rule, except as provided for by § 41- 1056.01.

I. The absence of comments pursuant to subsection C, D or E of this section or article 4.1 of this chapter does not prevent the council from acting pursuant to this section.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Amended by Laws 1990, Ch. 265, § 3. Amended by Laws 1992, Ch. 239, § 11, effective September 30, 1992. Amended by Laws 1994, Ch. 363, § 24, effective January 1, 1995. Amended by Laws 1995, Ch. 251, § 9, effective July 13, 1995. Amended by Laws 1996, Ch. 102, § 41, effective April 9, 1996. Amended by Laws 1998, Ch. 57, § 45. Amended by Laws 2002, Ch. 334, § 11, effective August 22, 2002.

§ 41-1053. Council review of summary rules

A. After receipt of the summary rule package from the agency, the council shall place the summary rule on its consent agenda for approval unless a member of the council or the committee requests a hearing.

B. If a hearing is requested, the council shall act on the summary rule pursuant to § 41-1052 or shall remand the summary rule to the agency for initiation of a rule making pursuant to §§ 41-1022, 41-1023 and 41-1024.

C. If the council returns the rule pursuant to § 41-1052 or remands the rule, the proposed summary rule's interim effect is revoked as of the date of initial publication of the proposed summary rule in the register unless the council orders otherwise.

D. The council, at any time a proposed summary rule is pending, may disapprove the summary rule making and order initiation of a regular rule making pursuant to §§ 41-1022, 41-1023 and 41-1024. The council's disapproval of the proposed summary rule revokes the interim effect of the proposed summary rule as of the date of initial publication of the proposed summary rule in the register unless the council orders otherwise.

Historical Note

Laws 1986, Ch. 232, § 5, effective January 1, 1987. Section repealed by Laws 1994, Ch. 363, § 25, effective January 1, 1995; new Section adopted by Laws 1994, Ch. 363, § 27, effective January 1, 1995. Amended by Laws 1995, Ch. 251, § 10, effective July 13, 1995. Amended by Laws 1998, Ch. 57, § 46, effective May 7, 1998.

§ 41-1054. Renumbered

Historical Note

Section 41-1054 renumbered to Section 41-1056 by Laws 1994, Ch. 363, § 26, effective January 1, 1995.

§ 41-1055. Economic, small business and consumer impact statement

A. The economic, small business and consumer impact summary shall include:
1. An identification of the proposed rule making.
2. A brief summary of the information included in the economic, small business and consumer impact statement.
3. If the economic, small business and consumer impact summary accompanies a proposed rule or a proposed summary rule, the name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

B. The economic, small business and consumer impact statement shall include:
1. An identification of the proposed rule making.
2. An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rule making.
3. A cost benefit analysis of the following:
   (a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making.
   (b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.
   (c) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.
4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rule making.
5. A statement of the probable impact of the proposed rule making on small businesses. The statement shall include:
   (a) An identification of the small businesses subject to the proposed rule making.
   (b) The administrative and other costs required for compliance with the proposed rule making.
   (c) A description of the methods that the agency may use to reduce the impact on small businesses. These methods may include:
      (i) Establishing less costly compliance requirements in the proposed rule making for small businesses.
      (ii) Establishing less costly schedules or less stringent deadlines for compliance in the proposed rule making.
      (iii) Exempting small businesses from any or all requirements of the proposed rule making.
   (d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.
6. A statement of the probable effect on state revenues.
7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.

D. An agency is not required to prepare an economic, small business and consumer impact statement pursuant to this chapter for the following rule makings:
1. Initial making, but not renewal, of an emergency rule pursuant to § 41-1026.
2. Summary rule makings pursuant to § 41-1027 that only repeal existing rule language.
3. Any rule making that decreases monitoring, record keeping or reporting burdens on agencies, political subdivisions, businesses or persons, unless the agency determines that increased costs of implementation or enforcement may equal or exceed the reduction in burdens.

E. The economic, small business and consumer impact statement for a rule making that is exempt pursuant to subsection D of this section shall state that the proposed rule making is exempt.

Historical Note

Section 41-1055 renumbered to Section 41-1057 by Laws 1994, Ch. 363, § 26, effective January 1, 1995; new Section 41-1055 adopted by Laws 1994, Ch. 363, § 27, effective January 1, 1995. Amended Laws 1998, Ch. 57, § 47 effective May 7, 1998. Amended by Laws 2002, Ch. 334, § 12, effective August 22, 2002.

§ 41-1056. Review by agency

A. At least once every five years, each agency shall review all of its rules to determine whether any rule should be amended or repealed. The agency shall prepare and obtain council approval of a written report summarizing its findings, its supporting reasons and any proposed course of action. For each rule, the report shall include a concise analysis of all of the following:
1. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.
2. Written criticisms of the rule received during the previous five years.
3. Authorization of the rule by existing statutes.
4. Whether the rule is consistent with other rules made by the agency, current agency enforcement policy and current agency views regarding the wisdom of the rule.
5. The clarity, conciseness and understandability of the rule.
6. The estimated economic, small business and consumer impact of the rules as compared to the economic, small business and consumer impact statement prepared on the last making of the rules.

B. The council shall schedule the periodic review of each agency's rules and shall approve or return, in whole or in part, the agency's report on its review. If the council returns an agency's report, in whole or in part, the council shall inform the agency of the manner in which its report is inadequate and, in consultation with the agency, shall schedule submission of a revised report. The council shall not approve a report unless the report complies with the provisions of subsection A.

C. The council may reschedule a report or portion of a report for any rule that is scheduled for review and that was initially

made or substantially revised within two years before the due date of the report as scheduled by the council.

D. If an agency finds that it cannot provide the written report to the council by the date it is due, the agency may file an extension with the council before the due date indicating the reason for the extension. The timely filing for an extension permits the agency to submit its report not more than one hundred twenty days after the due date.

E. If an agency fails to submit its report, including a revised report pursuant to subsection B, or file an extension before the due date of the report or if it files an extension and does not submit its report within the extension period, the rules scheduled for review expire and the council shall:

1. Cause a notice to be published in the next register that states the rules have expired and are no longer enforceable.
2. Notify the secretary of state that the rules have expired and that the rules are to be removed from the code.
3. Notify the agency that the rules have expired and are no longer enforceable.

F. If a rule expires as provided in subsection E and the agency wishes to reestablish the rule, the agency shall comply with this chapter.

G. Not less than ninety days prior to the due date of a report, the council shall send a written notice to the head of the agency whose report is due, the governor and the director of the department of administration. The notice shall list the rules to be reviewed and the date the report is due.

H. On or before June 30 of each year, each agency shall report to the council the agency's progress toward completion of the course of action established in all reports submitted to the council during the previous five years. The annual report prescribed by this subsection shall be on a form developed by the council.

Historical Note

Renumbered from § 41-1054 by Laws 1994, Ch. 363, § 26, effective January 1, 1995. Amended by Laws 1995, Ch. 251, § 11, effective July 13, 1995. Amended by Laws 1998, Ch. 57, § 48, effective May 7, 1998. Amended by Laws 1999, Ch. 300, § 24.

§ 41-1056.01. Impact statements; appeals

A. Within two years after a rule is finalized, a person who is or may be affected by the rule may file a written petition with an agency objecting to all or part of a rule on the grounds that either:

1. The actual economic, small business or consumer impact significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule.
2. The actual economic, small business or consumer impact was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule.

B. The burden of proof is on the petitioner to show that either or both of the provisions set forth in subsection A of this section are met.

C. Within thirty days after receiving the copy of the petition, the agency shall reevaluate the rule and its economic impacts and publish notice of the petition in the register. For at least thirty days after publication of the notice the agency shall afford persons the opportunity to submit in writing statements, arguments, data and views on the rule and its impacts. Within thirty days after the close of comment, the agency shall publish a written summary of comments received, the agency's response to those comments, and the final decision of the agency on whether to initiate a rule making or to amend or repeal the rule. The agency shall initiate any such rule making within forth-five days after publication of its final decision.

D. Any person who is or may be affected by the agency's final decision on whether to initiate a rule making pursuant to subsection C of this section may appeal that decision to the council within thirty days after publication of the agency's final decision.

E. The council shall place on its agenda the appeal if at least three council members make such a request of the council chairman within two weeks after the filing of the appeal with the council.

F. If the appeal is placed on the council's agency, the council chairman shall provide a copy of the appeal and written notice to the agency that the council will consider the appeal. The agency shall provide the council with a copy of the written summary described in subsection C of this section.

G. The council shall require an agency to promptly initiate a rule making or to amend or repeal the rule or the rule package as prescribed by § 41-1024, subsection E, objected to in the petition if the council finds that either or both of the provisions set forth in subsection A of this section are met.

H. This section shall not apply to a rule for which there is a final judgment of a court of competent jurisdiction based on the grounds of whether the contents of the economic, small business and consumer impact statement were insufficient or inaccurate.

Historical Note

Added by Laws 1995, Ch. 251, § 12, effective July 13, 1995. Amended Laws 1998, Ch. 57, § 49, effective May 7, 1998.

§ 41-1057. Exemptions

In addition to the exemptions stated in § 41-1005, this article does not apply to:

1. An agency which is a unit of state government headed by a single elected official.
2. The corporation commission, which shall adopt substantially similar rule review procedures, including the preparation of an economic impact statement and a statement of the effect of the rule on small business.
3. The state board of directors for community colleges.
4. The state board of education.
5. The industrial commission of Arizona when incorporating by reference the federal occupational safety and health standards as published in 29 code of federal regulations parts 1910, 1926 and 1928.
6. The Arizona state lottery if making rules that relate only to the design, operation or prize structure of a lottery game.

Historical Note

Renumbered from § 41-1055 by Laws 1994, Ch. 363, § 26, effective January 1, 1995. Amended Laws 1998, Ch. 57, § 50, effective May 7, 1998.

ARTICLE 6. ADJUDICATIVE PROCEEDINGS

§ 41-1061. Contested cases; notice; hearing; records

A. In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Unless otherwise provided by law, the notice shall be given at least twenty days prior to the date set for the hearing.

B. The notice shall include:

1. A statement of the time, place and nature of the hearing.
2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

3. A reference to the particular sections of the statutes and rules involved.
4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

C. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

D. Unless precluded by law, and except as to claims for compensation and benefits under chapter 6 of title 23, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

E. The record in a contested case shall include:
1. All pleadings, motions, interlocutory rulings.
2. Evidence received or considered.
3. A statement of matters officially noticed.
4. Objections and offers of proof and rulings thereon.
5. Proposed findings and exceptions.
6. Any decision, opinion or report by the officer presiding at the hearing.
7. All staff memoranda, other than privileged communications, or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.

F. Oral proceedings or any part thereof shall be recorded manually or by a recording device and shall be transcribed on request of any party, unless otherwise provided by law. The cost of such transcript shall be paid by the party making the request, unless otherwise provided by law or unless assessment of the cost is waived by the agency.

G. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

Historical Note

Renumbered as § 41-1061 by Laws 1986, Ch. 232, § 3, effective January 1, 1987.

§ 41-1062. Hearings; evidence; official notice; power to require testimony and records; rehearing

A. Unless otherwise provided by law, in contested cases the following shall apply:
1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings shall be grounds for reversing any administrative decision or order providing the evidence supporting such decision or order is substantial, reliable, and probative. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Every person who is a party to such proceedings shall have the right to be represented by counsel, to submit evidence in open hearing and shall have the right of cross-examination. Unless otherwise provided by law, hearings may be held at any place determined by the agency.
2. Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, parties shall be given an opportunity to compare the copy with the original.
3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.
4. The officer presiding at the hearing may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Unless otherwise provided by law or agency rule, subpoenas so issued shall be served and, upon application to the court by a party or the agency, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action. On application of a party or the agency and for use as evidence, the officer presiding at the hearing may permit a deposition to be taken, in the manner and upon the terms designated by him, of a witness who cannot be subpoenaed or is unable to attend the hearing. Prehearing depositions and subpoenas for the production of documents may be ordered by the officer presiding at the hearing, provided that the party seeking such discovery demonstrates that the party has reasonable need of the deposition testimony or materials being sought. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness in the superior courts of the state of Arizona, unless otherwise provided by law or agency rule. Notwithstanding the provisions of section 12-2212, no subpoenas, depositions or other discovery shall be permitted in contested cases except as provided by agency rule or this paragraph.

B. Except when good cause exists otherwise, the agency shall provide an opportunity for a rehearing or review of the decision of an agency before such decision becomes final. Such rehearing or review shall be governed by agency rule drawn as closely as practicable from rule 59, Arizona rules of civil procedure, relating to new trial in superior court.

Historical Note

Renumbered as § 41-1062 by Laws 1986, Ch. 232, § 3, effective January 1, 1987. Amended by Laws 1991, Ch. 44, § 1.

§ 41-1063. Decisions and orders

Unless otherwise provided by law, any final decision or order adverse to a party in a contested case shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Unless otherwise provided by law, parties shall be notified either personally or by mail to their last known address of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

Historical Note

Renumbered as § 41-1063 by Laws 1986, Ch. 232, § 3, effective January 1, 1987.

§ 41-1064. Licenses; renewal; revocation; suspension; annulment; withdrawal

A. When the grant, denial or renewal of a license is required to be preceded by notice and an opportunity for a hearing, the provisions of this article concerning contested cases apply.

B. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of

the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

C. No revocation, suspension, annulment or withdrawal of any license is lawful unless, prior to the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this chapter. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

Historical Note

Renumbered as § 41-1064 and amended by Laws 1986, Ch. 232, § 3, 102, effective January 1, 1987.

§ 41-1065. Hearing on denial of license or permit

Proceedings for licenses or permits on application when not required by law to be preceded by notice and opportunity for hearing shall be governed by the provisions of the law relating to the particular agency, provided that when an application for a license or permit is denied under the provisions of the law relating to a particular agency the applicant shall be entitled to have a hearing before such agency on such denial upon filing within fifteen days after receipt of notice of such refusal a written application for such hearing. Notice shall be given in the manner prescribed by § 41-1061. At such hearing such applicant shall be the moving party and have the burden of proof. Such hearing shall be conducted in accordance with this article for hearing of a contested case before an agency. Such hearing before such agency shall be limited to those matters originally presented to the agency for its determination on such application.

Historical Note

Renumbered as § 41-1065 and amended by Laws 1986, Ch. 232, §§ 3, 103, effective January 1, 1987. Amended by Laws 1997, Ch. 221, § 183, effective July 21, 1997.

§ 41-1066. Compulsory testimony; privilege against self-incrimination

A. A person may not refuse to attend and testify or produce evidence sought by an agency in an action, proceeding or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture unless it constitutes the compelled testimony or the private papers of the person which would be privileged evidence either pursuant to the fifth amendment of the constitution of the United States or article II, section 10, constitution of Arizona, and the person claims the privilege prior to the production of the testimony or papers.

B. If a person asserts his privilege against self-incrimination and the agency seeks to compel production of the testimony or documents sought, it may, with the prior written approval of the attorney general, issue a written order compelling the testimony or production of documents in proceedings and investigations before the agency or apply to the appropriate court for such an order in other actions or proceedings.

C. Evidence produced pursuant to subsection B is not admissible in evidence or usable in any manner in a criminal prosecution, except for perjury, false swearing, tampering with physical evidence or any other offense committed in connection with the appearance made pursuant to this section against the person testifying or the person producing his private papers.

Historical Note

Renumbered as § 41-1066 by Laws 1986, Ch. 232, § 3, effective January 1, 1987.

§ 41-1067. Applicability of article

This article only applies to contested cases of agencies that are exempt from article 10 of this chapter as provided in § 41-1092.02.

Historical Note

Laws 1998, Ch. 57, § 51, effective May 7, 1998.

ARTICLE 7. MILITARY ADMINISTRATIVE RELIEF

§ 41-1071. Military relief from administrative procedures; process

At any stage, any action or proceeding before any state agency, board, commission or administrative tribunal involving a person on active duty in the military service of the United States or this state as a necessary party, which occurs during such period of service or within sixty days thereafter, may be stayed in the discretion of the state administrative entity before which it is pending, on its own motion. The state administrative entity shall not stay an action or proceeding on its own motion if the service member makes a written objection to the stay. Such action or proceeding shall be stayed on application to the state administrative entity by such person or some person on his behalf, unless in the written decision of the state administrative entity, the ability of the service member to pursue the claim or defense in the action or proceeding is not prejudiced by the military service.

Historical Note

Added as § 41-1081 by Laws 1991, Ch. 123, § 1, effective May 14, 1991. Renumbered as § 41-1071.

ARTICLE 7.1 LICENSING TIME FRAMES

§ 41-1072. Definitions

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.
2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.
3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.

Historical Note

Added by Laws 1996, Ch. 102, § 42, effective April 9, 1996.

§ 41-1073. Time frames; exception

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall

time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States Environmental Protection Agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.
2. The resources of the agency granting or denying the license.
3. The economic impact of delay on the regulated community.
4. The impact of the licensing decision on public health and safety.
5. The possible use of volunteers with expertise in the subject matter area.
6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
7. The possible increased cooperation between the agency and the regulated community.
8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.
2. Within seven days after receipt of the initial application.
3. By a lottery method.

Historical Note

Added by Laws 1996, Ch. 102, § 42, effective April 9, 1996. Amended Laws 1998, Ch. 57, § 52, effective May 7, 1998. Amended by Laws 2002, Ch. 334, § 13, effective August 22, 2002.

§ 41-1074. Compliance with administrative completeness review time frame

A. An agency shall issue a written notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame.

B. If an agency determines that an application for a license is not administratively complete, the agency shall include a comprehensive list of the specific deficiencies in the written notice provided pursuant to subsection A. If the agency issues a written notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the agency receives the missing information from the applicant.

C. If an agency does not issue a written notice of administrative completenesss or deficiencies within the administrative completeness review time frame, the application is deemed administratively complete. If an agency issues a timely written notice of deficiencies, an application shall not be complete until all requested information has been received by the agency.

Historical Note

Added by Laws 1996, Ch. 102, § 42, effective April 9, 1996.

§ 41-1075. Compliance with substantive review time frame

A. During the substantive review time frame, an agency may make one comprehensive written request for additional information. The agency and applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information. If an agency issues a comprehensive written request or a supplemental request by mutual written agreement for additional information, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date that the agency receives the additional information from the applicant.

B. By mutual written agreement, an agency and an applicant for a license may extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed twenty-five per cent of the overall time frame.

Historical Note

Added by Laws 1996, Ch. 102, § 42, effective April 9, 1996.

§ 41-1076. Compliance with overall time frame

Unless an agency and an applicant for a license mutually agree to extend the substantive review time frame and the overall time frame pursuant to § 41-1075, an agency shall issue a written notice granting or denying a license within the overall time frame to an applicant. If an agency denies an application for a license, the agency shall include in the written notice at least the following information:

1. Justification for the denial with references to the statutes or rules on which the denial is based.
2. An explanation of the applicant's right to appeal the denial. The explanation shall include the number of days in which the applicant must file a protest challenging the denial and the name and telephone number of an agency contact person who can answer questions regarding the appeals process.

Historical Note

Added by Laws 1996, Ch. 102, § 42, effective April 9, 1996.

§ 41-1077. Consequence for agency failure to comply with overall time frame; refund; penalty

A. If an agency does not issue to an applicant the written notice granting or denying a license within the overall time frame or within the time frame extension pursuant to § 41-1075, the agency shall refund to the applicant all fees charged for reviewing and acting on the application for the license and shall excuse payment of any such fees that have not yet been paid. The agency shall not require an applicant to submit an application for a refund pursuant to this subsection. The refund shall be made within thirty days after the expiration of the overall time frame or the time frame extension. The agency shall continue to process the application subject to subsection B of this section. Notwithstanding any other statute, the agency shall make the refund from the fund in which the application fees were originally deposited. This section applies only to license applications that were subject to substantive review.

B. Except for license applications that were not subject to substantive review, the agency shall pay a penalty to the state general fund for each month after the expiration of the overall time frame or the time frame extension until the agency issues

written notice to the applicant granting or denying the license. The agency shall pay the penalty from the agency fund in which the application fees were originally deposited. The penalty shall be one per cent of the total fees received by the agency for reviewing and acting on the application for each license that the agency has not granted or denied on the last day of each month after the expiration of the overall time frame or time frame extension for that license.

Historical Note

Added by Laws 1996, Ch. 102, § 43, effective January 1, 1998. Amended Laws 1998, Ch. 57, § 53, effective May 7, 1998.

§ 41-1078. Reporting; compliance with time frames

A. Beginning on September 1, 1998 for agencies that have established time frames before July 1, 1998 and by September 1 of each year thereafter for all agencies that issue licenses, each agency shall report to the governor's regulatory review council on summary forms developed by the council the agency's compliance level with its overall time frames for the prior fiscal year. The agency reports shall include the number of licenses issued or denied by the agency within the applicable time frames, the dollar amount of all fees returned to applicants and all penalties paid to the state general fund due to the agency's failure to comply with the applicable time frames and, if this article does not apply to licenses issued by the agency because the licenses are issued within seven days after receipt of initial application, a certification by category of license, including a statutory reference for the category of license, that the agency has complied with the seven-day requirement.

B. By December 1 of each year, the governor's regulatory review council shall compile the summary forms submitted by the agencies pursuant to subsection A and present them to the governor, the president of the senate, the speaker of the house of representatives and the cochairmen of the administrative rules oversight committee.

Historical Note

Added by Laws 1996, Ch. 102, § 42, effective April 9, 1996. Amended by Laws 1998, Ch. 57, § 54 effective May 7, 1998.

§ 41-1079. Information required to be provided

A. An agency that issues licenses shall provide the following information to an applicant at the time the applicant obtains an application for a license:

1. A list of all of the steps the applicant is required to take in order to obtain the license.
2. The applicable licensing time frames.
3. The name and telephone number of an agency contact person who can answer questions or provide assistance throughout the application process.

B. This section does not apply to the Arizona peace officer standards and training board established by § 41-1821.

Historical Note

Laws 1998, Ch. 57, § 55, effective May 7, 1998. Amended by Laws 2000, Ch. 113, § 167, effective July 18, 2000.

ARTICLE 8. DELEGATION OF FUNCTIONS, POWERS OR DUTIES

§ 41-1081. Standards for delegation

A. No agency may enter into or amend any delegation agreement unless the delegation agreement clearly sets forth all of the following:

1. Each function, power or duty being delegated by the agency, the term of the agreement and the procedures for terminating the agreement.
2. The standards of performance required to fulfill the agreement.
3. The types of fees that will be imposed on regulated parties and the legal authority for imposing any such fees.
4. The qualifications of the personnel of the political subdivision responsible for exercising the delegated functions, powers or duties.
5. Record keeping and reporting requirements.
6. Auditing requirements if the delegation agreement includes the transfer of funds from the delegating agency to the political subdivision.
7. A definition of the enforcement role if enforcement authority is being delegated.
8. Procedures for resolving conflicts between the parties to the delegation agreement.
9. Procedures for amending the delegation agreement.
10. The names and addresses of primary contact persons at both the delegating agency and the political subdivision.

B. An agency that seeks to delegate functions, powers or duties shall file with the secretary of state a summary of the proposed delegation agreement. The summary shall provide the name of a person to contact in the agency with questions or comments and shall state that a copy of the proposed delegation agreement may be obtained upon request from the agency. The secretary of state shall publish the summary in the next register.

C. For at least thirty days after publication of the notice of the proposed delegation agreement in the register, the agency shall provide persons the opportunity to submit in writing statements, arguments, data and views on the proposed delegation agreement and shall provide an opportunity for a public hearing if there is sufficient public interest.

D. A public hearing on the delegation agreement shall not be held earlier than thirty days after the notice of its location and time is published in the register. The agency shall determine a location and time for the public hearing that affords a reasonable opportunity for persons to participate. At that public hearing persons may present oral argument, data and views on the proposed delegation agreement.

E. After the conclusion of the public comment period and hearing, if any, the agency shall prepare a written summary, responding to the comments received, whether oral or written. The agency shall consider the comments received from the public in determining whether to enter into the proposed delegation agreement. The agency shall give written notice to those persons who submitted comments of the agency's decision on whether to enter into the proposed delegation agreement. The delegation agreement is effective thirty days after written notice of the agency's final decision is given unless an appeal is filed and pending before the council pursuant to subsection F.

F. A person who filed written comments with the delegating agency objecting to all or part of the proposed delegation agreement may appeal to the council the delegating agency's decision to enter into the delegation agreement within thirty days after the agency gives written notice to enter into the delegation agreement pursuant to subsection E. The council shall place the appeal of the delegation agreement on its next meeting agenda if at least three council members make such a request of the council chairman within two weeks of the filing of the appeal.

G. Delegation agreements that are appealed to and considered by the council shall become effective upon council approval of the delegation agreement. Delegation agreements that are

appealed to the council and not considered by the council are effective either thirty days after written notice of the agency's final decision is given pursuant to subsection E, or two weeks after an appeal is filed if at least three council members do not request council consideration of the delegation agreement pursuant to subsection F, whichever date is later.

H. The council shall not approve the delegation agreement if it does not meet the provisions set forth in subsection A or if the agency has not provided adequate notice and an opportunity for comment to the public.

Historical Note

Laws 1994, Ch. 363, § 28, effective January 1, 1995.

§ 41-1082. Existing delegation agreements

A. By January 1, 1995, each state agency shall compile and make public a list of all delegation agreements that it has entered into with political subdivisions and a list of all subdelegation agreements to the delegation agreements. Upon request and for a reasonable cost, a person may obtain a copy of any delegation agreement on the list.

B. By January 1, 1996, each state agency shall amend, if necessary, any delegation agreement entered into prior to the effective date of this article to conform with criteria set forth in § 41-1081, subsection A.

Historical Note

Laws 1994, Ch. 363, § 28, effective January 1, 1995.

§ 41-1083. No presumption of funding authority

No political subdivision may assess any fee, tax or other assessment in the exercise of its delegated authorities pursuant to any delegation agreement unless the delegation agreement specifically authorizes the fee, tax or other assessment or the political subdivision is otherwise authorized by law to impose the fee, tax or other assessment.

Historical Note

Laws 1994, Ch. 363, § 28, effective January 1, 1995.

§ 41-1084. Prohibition on subdelegation

No political subdivision that exercises delegated authority pursuant to a delegation agreement may subdelegate its delegated authority to another agency or political subdivision without first notifying the delegating agency.

Historical Note

Laws 1994, Ch. 363, § 28, effective January 1, 1995.

ARTICLE 9. SUBSTANTIVE POLICY STATEMENTS

§ 41-1091. Substantive policy statements

A. An agency shall file substantive policy statements pursuant to Section 41-1013, subsection B.

B. An agency shall ensure that the first page of each substantive policy statement includes the following notice:

> This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

C. The agency shall publish at least annually a directory summarizing the subject matter of all currently applicable rules and substantive policy statements. The agency shall keep copies of this directory and all of its substantive policy statements at one location. The directory, rules and substantive policy statements and any materials incorporated by reference in the rules or substantive policy statements shall be open to public inspection at the office of the agency director.

D. On or before June 30 of each year the agency head shall certify to the council that the agency is in compliance with this section.

Historical Note

Added by Laws 1995, Ch. 251, § 13, effective July 13, 1995. Amended Laws 1998, Ch. 57, § 56, effective May 7, 1998. Amended by Laws 2002, Ch. 334, § 14, effective August 22, 2002.

ARTICLE 10. UNIFORM ADMINISTRATIVE HEARING PROCEDURES

Historical Note

Heading amended by Laws 2000, Ch. 113, § 168, effective July 18, 2000.

§ 41-1092. Definitions

In this article, unless the context otherwise requires:

1. "Administrative law judge" means an individual or an agency head, board or commission that sits as an administrative law judge, that conducts administrative hearings in a contested case or an appealable agency action and that makes decisions regarding the contested case or appealable agency action.
2. "Administrative law judge decision" means the findings of fact, conclusions of law and recommendations or decisions issued by an administrative law judge.
3. "Appealable agency action" means an action that determines the legal rights, duties or privileges of a party and that is not preceded by an opportunity for an administrative hearing. Appealable agency actions do not include interim orders by self- supporting regulatory boards or rules, orders, standards or statements of policy of general application issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it, nor does it mean or include rules concerning the internal management of the agency that do not affect private rights or interests. For the purposes of this paragraph, administrative hearing does not include a public hearing held for the purpose of receiving public comment on a proposed agency action.
4. "Director" means the director of the office of administrative hearings.
5. "Final administrative decision" means a decision by an agency that is subject to judicial review pursuant to title 12, chapter 7, article 6.
6. "Office" means the office of administrative hearings.
7. "Self-supporting regulatory board" means any one of the following:
   (a) The state board of accountancy.
   (b) The state board of appraisal.
   (c) The board of barbers.
   (d) The board of behavioral health examiners.
   (e) The Arizona state boxing commission.
   (f) The state board of chiropractic examiners.
   (g) The board of cosmetology.
   (h) The state board of dental examiners.
   (i) The state board of funeral directors and embalmers.
   (j) The Arizona game and fish commission.
   (k) The board of homeopathic medical examiners.
   (l) The Arizona medical board.
   (m) The naturopathic physicians board of medical examiners.

(n) The state board of nursing.
(o) The board of examiners of nursing care institution administrators and adult care home managers.
(p) The board of occupational therapy examiners.
(q) The state board of dispensing opticians.
(r) The state board of optometry.
(s) The Arizona board of osteopathic examiners in medicine and surgery.
(t) The Arizona peace officer standards and training board.
(u) The Arizona state board of pharmacy.
(v) The board of physical therapy examiners.
(w) The state board of podiatry examiners.
(x) The state board for private postsecondary education.
(y) The state board of psychologist examiners.
(z) The board of respiratory care examiners.
(aa) The structural pest control commission.
(bb) The state board of technical registration.
(cc) The Arizona state veterinary medical examining board.
(dd) The acupuncture board of examiners.
(ee) The regulatory board of physician assistants.
(ff) The board of athletic training.
(gg) The board of massage therapy.

Historical Note

Added by Laws 1995, Ch. 251, § 14, effective September 30, 1995. Amended by Laws 1996, Ch. 102 § 44, effective April 9, 1996. Amended by Laws 1997, Ch. 221 § 184, effective July 21, 1997. Amended Laws 1998, Ch. 57, § 58, effective May 7, 1998. Amended by Laws 2000, Ch. 113, § 169, effective July 18, 2000. Amended by Laws 2002, Ch. 254, § 29, effective August 22, 2002. Amended by Laws 2002, Ch. 277, § 21, effective August 22, 2002. Amended by Laws 2003, Ch. 202, § 4, effective May 12, 2003.

§ 41-1092.01. Office of administrative hearings; director; powers and duties; fund

A. An office of administrative hearings is established.

B. The governor shall appoint the director pursuant to section 38-211. At a minimum, the director shall have the experience necessary for appointment as an administrative law judge. The director also shall possess supervisory, management and administrative skills, as well as knowledge and experience relating to administrative law.

C. The director shall:
1. Serve as the chief administrative law judge of the office.
2. Make and execute the contracts and other instruments that are necessary to perform the director's duties.
3. Hire employees, including full-time administrative law judges, and contract for special services, including temporary administrative law judges, that are necessary to carry out this article. An administrative law judge employed or contracted by the office shall have graduated from an accredited college of law or shall have at least two years of administrative managerial experience in the subject matter or agency section the administrative law judge is assigned to in the office.
4. Make rules that are necessary to carry out this article, including rules governing ex parte communications in contested cases.
5. Submit a report to the governor, speaker of the house of representatives and president of the senate by November 1 of each year describing the activities and accomplishments of the office. The director's annual report shall include a summary of the extent and effect of agencies' utilization of administrative law judges, court reporters and other personnel in proceedings under this article and recommendations for changes or improvements in the administrative procedure act or any agency's practice or policy with respect to the administrative procedure act.
6. Secure, compile and maintain all decisions, opinions or reports of administrative law judges issued pursuant to this article and the reference materials and supporting information that may be appropriate.
7. Develop, implement and maintain a program for the continuing training and education of administrative law judges and agencies in regard to their responsibilities under this article. The program shall require that an administrative law judge receive training in the technical and subject matter areas of the sections to which the administrative law judge is assigned.
8. Develop, implement and maintain a program of evaluation to aid the director in the evaluation of administrative law judges appointed pursuant to this article that includes comments received from the public.
9. Annually report the following to the governor, the president of the senate and the speaker of the house of representatives by December 1 for the prior fiscal year:
   (a) The number of administrative law judge decisions rejected or modified by agency heads.
   (b) By category, the number and disposition of motions filed pursuant to § 41-1092.07, subsection A to disqualify office administrative law judges for bias, prejudice, personal interest or lack of expertise.
   (c) By agency, the number and type of violations of § 41-1009.
10. Schedule hearings pursuant to § 41-1092.05 upon the request of an agency or the filing of a notice of appeal pursuant to § 41-1092.03.

D. The director shall not require legal representation to appear before an administrative law judge.

E. Except as provided in subsection F of this section, all state agencies supported by state general fund sources, unless exempted by this article, and the registrar of contractors shall use the services and personnel of the office to conduct administrative hearings. All other agencies shall contract for services and personnel of the office to conduct administrative hearings.

F. An agency head, board or commission that directly conducts an administrative hearing as an administrative law judge is not required to use the services and personnel of the office for that hearing.

G. Each state agency, and each political subdivision contracting for office services pursuant to subsection I of this section, shall make its facilities available, as necessary, for use by the office in conducting proceedings pursuant to this article.

H. The office shall employ full-time administrative law judges to conduct hearings required by this article or other laws as follows:
1. The director shall assign administrative law judges from the office to an agency, on either a temporary or a permanent basis, at supervisory or other levels, to preside over contested cases and appealable agency actions in accordance with the special expertise of the administrative law judge in the subject matter of the agency.
2. The director shall establish the subject matter and agency sections within the office that are necessary to carry out this article. Each subject matter and agency sections shall provide training in the technical and subject matter areas of the section as prescribed in subsection C, paragraph 7 of this section.

I. If the office cannot furnish an office administrative law judge promptly in response to an agency request, the director may contract with qualified individuals to serve as temporary administrative law judges. These temporary administrative law judges are not employees of this state.

J. The office may provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this article. The director may enter into contracts with political subdivisions of this state, and these political subdivisions may contract with the director for the purpose of providing administrative law judges and reporters for administrative proceedings or informal dispute resolution. The contract may define the scope of the administrative law judge's duties. Those duties may include the preparation of findings, conclusions, decisions or recommended decisions or a recommendation for action by the political subdivision. For these services, the director shall request payment for services directly from the political subdivision for which the services are performed, and the director may accept payment on either an advance or reimbursable basis.

K. The office shall apply monies received pursuant to subsections E and J of this section to offset its actual costs for providing personnel and services.

Historical Note

Added by Laws 1995, Ch. 251, § 14, effective September 30, 1995. Amended by Laws 1996, Ch. 102 § 45, effective April 9, 1996. Amended by Laws 1997, Ch. 221 § 185, effective July 21, 1997. Amended Laws 1998, Ch. 57, § 59, effective May 7, 1998.

§ 41-1092.02. Appealable agency actions; application of procedural rules; exemption from article

A. This article applies to all contested cases as defined in section 41-1001 and all appealable agency actions, except contested cases with or appealable agency actions of:

1. The state department of corrections.
2. The board of executive clemency.
3. The industrial commission of Arizona.
4. The Arizona corporation commission.
5. The Arizona board of regents and institutions under its jurisdiction.
6. The state personnel board.
7. The department of juvenile corrections.
8. The department of transportation.
9. The department of economic security except as provided in sections 8-506.01 and 8-811.
10. The department of revenue regarding income tax, withholding tax or estate tax or any tax issue related to information associated with the reporting of income tax, withholding tax or estate tax.
11. The board of tax appeals.
12. The state board of equalization.
13. The state board of education.

B. Unless waived by all parties, an administrative law judge shall conduct all hearings under this article, and the procedural rules set forth in this article and rules made by the director apply.

C. Except as provided in subsection A of this section:

1. A contested case heard by the office of administrative hearings regarding taxes administered under title 42 shall be subject to the provisions under section 42-1251.
2. A final decision of the office of administrative hearings regarding taxes administered under title 42 may be appealed by either party to the director of the department of revenue, or a taxpayer may file and appeal directly to the board of tax appeals pursuant to section 42-1253.

D. Except as provided in subsections A, B, E, F and G of this section and notwithstanding any other administrative proceeding or judicial review process established in statute or administrative rule, this article applies to all appealable agency actions and to all contested cases.

E. Except for a contested case or an appealable agency action regarding unclaimed property, sections 41-1092.03, 41-1092.08 and 41-1092.09 do not apply to the department of revenue.

F. The board of appeals established by section 37-213 is exempt from:

1. The time frames for hearings and decisions provided in section 41-1092.05, subsection A, section 41-1092.08 and section 41-1092.09.
2. The requirement in section 41-1092.06, subsection A to hold an informal settlement conference at the appellant's request if the sole subject of an appeal pursuant to section 37-215 is the estimate of value reported in an appraisal of lands or improvements.

G. Auction protest procedures pursuant to title 37, chapter 2, article 4.1 are exempt from this article.

Historical Note

Added by Laws 1995, Ch. 251, § 14, effective September 30, 1995. Amended by Laws 1996, Ch. 102 § 46, effective April 9, 1996. Amended by Laws 1997, Ch. 221, § 186 effective July 21, 1997. Amended by Laws 1997, Ch. 224, § 3 effective January 1, 1998. Amended by Laws 1998, Ch. 57, § 60, effective May 7, 1998. Amended by Laws 1999, Ch. 211, § 39. Amended by Laws 2000, Ch. 184, § 5, effective January 1, 2001. Amended by Laws 2001, Ch. 241, § 7. Amended by Laws 2002, Ch. 336, § 20, effective August 22, 2002.

§ 41-1092.03. Notice of appealable agency action; hearing; informal settlement conference; applicability

A. An agency shall serve notice of an appealable agency action pursuant to § 41-1092.04. The notice shall identify the statute or rule that is alleged to have been violated or on which the action is based and shall include a description of the party's right to request a hearing on an appealable agency action and to request an informal settlement conference pursuant to § 41-1092.06.

B. A party may obtain a hearing on an appealable agency action by filing a notice of appeal with the agency within thirty days after receiving the notice prescribed in subsection A of this section. The notice may be filed by a party whose legal rights, duties or privileges were determined by the appealable agency action. A notice of appeal also may be filed by a party who will be adversely affected by the appealable agency action and who exercised any right to comment on the action provided by law or rule, provided that the grounds for appeal are limited to issues raised in that party's comments. The notice of appeal shall identify the party, the party's address, the agency and the action being appealed and shall contain a concise statement of the reasons for the appeal. The agency shall notify the office of the appeal and the office shall schedule a hearing pursuant to § 41-1092.05, except as provided in § 41-1092. 01, subsection F.

C. If good cause is shown an agency head may accept an appeal that is not filed in a timely matter.

Historical Note

Added by Laws 1996, Ch. 102, § 47, effective April 9, 1996. Amended by Laws 1997, Ch. 221, § 187, effective July 21, 1997.

§ 41-1092.04. Service of documents

Unless otherwise provided in this article, every notice or decision under this article shall be served by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the agency and every other party to the action to the party's last address of record with the agency. Each party shall inform the agency and the office of any change of address within five days of the change.

Historical Note

Added by Laws 1996, Ch. 102, § 47, effective April 9, 1996.

§ 41-1092.05. Scheduling of hearings; prehearing conferences

A. Except as provided in subsections B and C, hearings for:
1. Appealable agency actions shall be held within sixty days after the notice of appeal is filed.
2. Contested cases shall be held within sixty days after the agency's request for a hearing.

B. Hearings for appealable agency actions of or contested cases with self-supporting regulatory boards that meet quarterly or less frequently shall be held at the next meeting of the board after the board receives the written decision of an administrative law judge or the issuance of the notice of hearing, except that:
1. If the decision of the administrative law judge is received or the notice of hearing is issued within thirty days before the board meets, the hearing shall be held at the following meeting of the board.
2. If good cause is shown, the hearing may be held at a later meeting of the board.

C. The date scheduled for the hearing may be advanced or delayed on the agreement of the parties or on a showing of good cause.

D. The agency shall prepare and serve a notice of hearing on all parties to the appeal or contested case at least thirty days before the hearing. The notice shall include:
1. A statement of the time, place and nature of the hearing.
2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
3. A reference to the particular sections of the statutes and rules involved.
4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. After the initial notice and on application, a more definite and detailed statement shall be furnished.

E. Notwithstanding subsection D, a hearing shall be expedited as provided by law or upon a showing of extraordinary circumstances or the possibility of irreparable harm if the parties to the appeal or contested case have actual notice of the hearing date. Any party to the appeal or contested case may file a motion with the director asserting the party's right to an expedited hearing. The right to an expedited hearing shall be listed on any abatement order. The Arizona health care cost containment system administration may file a motion with every member grievance and eligibility appeal that cites federal law and that requests that a hearing be set within thirty days after the motion is filed.

F. Prehearing conferences may be held to:
1. Clarify or limit procedural, legal or factual issues.
2. Consider amendments to any pleadings.
3. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing.
4. Obtain stipulations or rulings regarding testimony, exhibits, facts or law.
5. Schedule deadlines, hearing dates and locations if not previously set.
6. Allow the parties opportunity to discuss settlement.

Historical Note

Added by Laws 1996, Ch. 102, § 47, effective April 9, 1996. Amended by Laws 1997, Ch. 221, § 188, effective July 21, 1997. Amended Laws 1998, Ch. 57, § 61, effective May 7, 1998.

§ 41-1092.06. Appeals of agency actions; informal settlement conferences; applicability

A. If requested by the appellant of an appealable agency action, the agency shall hold an informal settlement conference within fifteen days after receiving the request. A request for an informal settlement conference shall be in writing and shall be filed with the agency no later than twenty days before the hearing. If an informal settlement conference is requested, the agency shall notify the office of the request and the outcome of the conference, except as provided in § 41-1092.01, subsection F. The request for an informal settlement conference does not toll the sixty day period in which the administrative hearing is to be held pursuant to § 41-1092.05.

B. If an informal settlement conference is held, a person with the authority to act on behalf of the agency must represent the agency at the conference. The agency representative shall notify the appellant in writing that statements, either written or oral, made by the appellant at the conference, including a written document created or expressed solely for the purpose of settlement negotiations, are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference shall waive their right to object to the participation of the agency representative in the final administrative decision.

Historical Note

Added by Laws 1996, Ch. 102, § 47, effective April 9, 1996. Amended by Laws 1997, Ch. 129, § 1, effective July 21, 1997.

§ 41-1092.07. Hearings

A. A party to a contested case or appealable agency action may file a nonperemptory motion with the director to disqualify an office administrative law judge from conducting a hearing for bias, prejudice, personal interest or lack of technical expertise necessary for a hearing.

B. The parties to a contested case or appealable agency action have the right to be represented by counsel or to proceed without counsel, to submit evidence and to cross-examine witnesses.

C. The administrative law judge may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil matters. The administrative law judge may administer oaths and affirmations to witnesses.

D. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the administrative law judge may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. The administrative law judge shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time

and protecting witnesses from harassment or undue embarrassment.

E. All hearings shall be recorded. The administrative law judge shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the agency's expense. Any party that requests a transcript of the proceeding shall pay the costs of the transcript to the court reporter or other transcriber.

F. Unless otherwise provided by law, the following apply:

1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.
2. Copies of documentary evidence may be received in the discretion of the administrative law judge. On request, parties shall be given an opportunity to compare the copy with the original.
3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence.
4. On application of a party or the agency and for use as evidence, the administrative law judge may permit a deposition to be taken, in the manner and on the terms designated by the administrative law judge, of a witness who cannot be subpoenaed or who is unable to attend the hearing. Subpoenas for the production of documents may be ordered by the administrative law judge if the party seeking the discovery demonstrates that the party has reasonable need of the materials being sought. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness in court, unless otherwise provided by law or agency rule. Notwithstanding section 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this paragraph or subsection C of this section.
5. Informal disposition may be made by stipulation, agreed settlement, consent order or default.
6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.
7. A final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

G. At a hearing on a denial of a license or permit, the applicant has the burden of proof.

Historical Note

Added by Laws 1996, Ch. 102, § 47, effective April 9, 1996. Amended by Laws 1998, Ch. 57, § 62, effective May 7, 1998. Amended by Laws 2000, Ch. 113, § 170, effective July 18, 2000.

§ 41-1092.08. Final administrative decisions; review

A. The administrative law judge of the office shall issue a written decision within twenty days after the hearing is concluded. The written decision shall contain a concise explanation of the reasons supporting the decision. The administrative law judge shall serve a copy of the decision on the agency. Upon request of the agency, the office shall also transmit to the agency the record of the hearing as described in section 12-904, except as provided in § 41-1092.01, subsection F.

B. Within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify it. If the head of the agency, executive director, board or commission declines to review the administrative law judge's decision, the agency shall serve a copy of the decision on all parties. If the head of the agency, executive director, board or commission rejects or modifies the decision the agency head, executive director, board or commission must file with the office, except as provided in § 41-1092.01, subsection F, and serve on all parties a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification.

C. A board or commission whose members are appointed by the governor may review the decision of the agency head, as provided by law, and make the final administrative decision.

D. Except as otherwise provided in this subsection, if the head of the agency or a board or commission does not accept, reject or modify the administrative law judge's decision within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, as evidenced by receipt of such action by the office by the thirtieth day the office shall certify the administrative law judge's decision as the final administrative decision. If the board or commission meets monthly or less frequently, if the office sends the administrative law judge's decision at least thirty days before the next meeting of the board or commission and if the board or commission does not accept, reject or modify the administrative law judge's decision at the next meeting of the board or commission, as evidenced by receipt of such action by the office within five days after the meeting the office shall certify the administrative law judge's decision as the final administrative decision.

E. For the purposes of subsections B and D of this section, a copy of the administrative law judge's decision is sent on personal delivery of the decision or five days after the decision is mailed to the head of the agency, executive director, board or commission.

F. The decision of the agency head is the final administrative decision unless either:

1. The agency head, executive director, board or commission does not review the administrative law judge's decision pursuant to subsection B of this section or does not reject or modify the administrative law judge's decision as provided in subsection D of this section, in which case the administrative law judge's decision is the final administrative decision.
2. The decision of the agency head is subject to review pursuant to subsection C of this section.

G. If a board or commission whose members are appointed by the governor makes the final administrative decision as an administrative law judge or upon review of the decision of the agency head, the decision is not subject to review by the head of the agency.

H. A party may appeal a final administrative decision pursuant to title 12, chapter 7, article 6, except as provided in § 41-1092.09, subsection B and except that if a party has not requested a hearing upon receipt of a notice of appealable agency action pursuant to § 41-1092.03, the appealable agency action is not subject to judicial review.

I. This section does not apply to the Arizona Peace Officer Standards and Training Board established by § 41-1821.

Historical Note

Added by Laws 1996, Ch. 102, § 47, effective April 9, 1996. Amended by Laws 1997, Ch. 221, § 189 effective July 21, 1997. Amended Laws 1998, Ch. 57, § 63, effective May 7, 1998. Subsection (A) corrected, added omitted text "of the office" (Supp. 99-1). Amended by Laws 2000, Ch. 113, § 171, effective July 18, 2000.

§ 41-1092.09. Rehearing or review

A. Except as provided in subsection B of this section:

1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.
2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.
3. After a hearing has been held and a final administrative decision has been entered pursuant to § 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7, article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.

D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

Historical Note

Added by Laws 1996, Ch. 102, § 47, effective April 9, 1996. Amended by Laws 1997, Ch. 221, § 190, effective July 21, 1997. Amended by Laws 1998, Ch. 57, § 64.

§ 41-1092.10. Compulsory testimony; privilege against self-incrimination

A. A person may not refuse to attend and testify or produce evidence sought by an agency in an action, proceeding or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture unless it constitutes the compelled testimony or the private papers of the person that would be privileged evidence either pursuant to the fifth amendment of the constitution of the United States or article II, section 10, constitution of Arizona, and the person claims the privilege before the production of the testimony or papers.

B. If a person asserts the privilege against self-incrimination and the agency seeks to compel production of the testimony or documents sought, the office or agency as provided in § 41-1092.01, subsection F may issue, with the prior written approval of the attorney general, a written order compelling the testimony or production of documents in proceedings and investigations before the office or agency as provided in § 41-1092.01, subsection F or apply to the appropriate court for such an order in other actions or proceedings.

C. Evidence produced pursuant to subsection B of this section is not admissible in evidence or usable in any manner in a criminal prosecution, except for perjury, false swearing, tampering with physical evidence or any other offense committed in connection with the appearance made pursuant to this section against the person testifying or the person producing the person's private papers.

Historical Note

Added by Laws 1996, Ch. 102, § 47, effective April 9, 1996. Amended by Laws 1997, Ch. 221, § 191 effective July 21, 1997. Section repealed by Laws 1998, Ch. 57, § 65 effective May 7, 1998; new Section adopted by Laws 1998, Ch. 57, § 66, effective May 7, 1998.

§ 41-1092.11. Licenses; renewal; revocation; suspension; annulment; withdrawal

A. If a licensee makes timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

B. Revocation, suspension, annulment or withdrawal of any license is not lawful unless, before the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this article. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the agency may order summary suspension of a license pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

Historical Note

Added by Laws 1996, Ch. 102, § 47, effective April 9, 1996. Section repealed by Laws 1998, Ch. 57, § 65 effective May 7, 1998; new Section adopted by Laws 1998, Ch. 57, § 66, effective May 7, 1998.

§ 41-1092.12. Private right of action; recovery of costs and fees; definitions

A. If an agency takes an action against a party that is arbitrary, capricious or not in accordance with law, the action is an appealable agency action if all of the following apply:

1. Within ten days after the action that is arbitrary, capricious or not in accordance with law, the party notifies the director of the agency in writing of the party's intent to file a claim pursuant to this section. This notice shall include a description of the action the party claims to be arbitrary, capricious or not in accordance with law and reasons why the action is arbitrary, capricious or not in accordance with law.

2. The agency continues the action that is arbitrary, capricious or not in accordance with law more than ten days after the agency receives the notice.
3. The action is not excluded from the definition of appealable agency action as defined in § 41-1092.

B. This section only applies if an administrative remedy or an administrative or a judicial appeal of final agency action is not otherwise provided by law.

C. If the party prevails, the agency shall pay reasonable costs and fees to the party from any monies appropriated to the agency and available for that purpose or from other operating monies of the agency. If the agency fails or refuses to pay the award within fifteen days after the demand, and if no further review or appeal of the award is pending, the prevailing party may file a claim with the department of administration. The department of administration shall pay the claim within thirty days in the same manner as an uninsured property loss under title 41, chapter 3.1, article 1, except that the agency is responsible for the total amount awarded and shall pay it from its operating monies. If the agency had appropriated monies available for paying the award at the time it failed or refused to pay, the legislature shall reduce the agency's operating appropriation for the following fiscal year by the amount of the award and shall appropriate that amount to the department of administration as reimbursement for the loss.

D. If the administrative law judge determines that the appealable agency action is frivolous, the administrative law judge may require the party to pay reasonable costs and fees to the agency in responding to the appeal filed before the office of administrative hearings.

E. For the purposes of this section:
1. "Action against the party" means any of the following that results in the expenditure of costs and fees:
   (a) A decision.
   (b) An inspection.
   (c) An investigation.
   (d) The entry of private property.
2. "Agency" means the department of environmental quality established pursuant to title 49, chapter 1, article 1.
3. "Costs and fees" means reasonable attorney and professional fees.
4. "Party" means an individual, partnership, corporation, association and public or private organization at whom the action was directed and who has expended costs and fees as a result of the action against the party.

Historical Note

Added by Laws 1998, Ch. 85, § 1, effective May 8, 1998.